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Oklahoma State Board of Examiners for **LONG-TERM** Care Administrators (*Formerly:* Oklahoma State Board of Examiners for **NURSING** Home Administrators)	490
Board of Regents of **OKLAHOMA** City Community College *(exempted 11-1-98)*	495
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Department of **CENTRAL** Services (*Formerly*: Office of **PUBLIC** Affairs)	580
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Board of Regents of **TULSA** Community College *(exempted 11-1-98)*	740
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Board of Regents of the **UNIVERSITY** of Science and Arts of Oklahoma *(exempted 11-1-98)*	760
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Oklahoma Department of **VETERANS** Affairs	770
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Emergency Adoptions

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

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

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next regular legislative session after its promulgation, or on an earlier date specified by the agency, if not already superseded by a permanent rule or terminated through legislative action as described in 75 O.S., Section 253(H)(2).

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

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

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

[OAR Docket #15-740]

RULEMAKING ACTION:
EMERGENCY adoption
RULES:
Subchapter 3. General Provider Policies
Part 1. General Scope and Administration
317:30-3-11. [AMENDED]
317:30-3-11.1. [AMENDED]
Subchapter 5. Individual Providers and Specialties
Part 3. Hospitals
317:30-5-44. [AMENDED]
Part 83. Residential Behavior Management Services In Foster Care Settings
317:30-5-744. [AMENDED]
Part 87. Birthing Centers
317:30-5-893. [AMENDED]
Part 97. Case Management Services for Under Age 18 At Risk of or in The Temporary Custody or Supervision of Office of Juvenile Affairs
317.30-5-973. [AMENDED]
Part 99. Case Management Services for Under Age 18 in Emergency, Temporary or Permanent Custody or Supervision of The Department of Human Services
317:30-5-993. [AMENDED]
Part 105. Residential Behavioral Management Services in Group Settings and Non-Secure Diagnostic and Evaluation Centers
317:30-5-1045. [AMENDED]
(Reference APA WF # 15-09)
AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Article 10, Section 23 of the Oklahoma Constitution; 42 CFR 447.45
ADOPTION:
June 25, 2015
APPROVED BY GOVERNOR:
June 30, 2015
EFFECTIVE:
Immediately upon governor's approval or July 1, 2015, whichever is later
EXPIRATION:
Effective through September 14, 2016, unless superseded by another rule or disapproved by the Legislature
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A

FINDING OF EMERGENCY:
The Agency finds that a compelling public interest exists and finds that an imminent peril exists to the preservation of the public health, safety, or welfare which necessitates promulgation of emergency rules and requests emergency approval of rule revisions to amend timely filing requirements. These emergency revisions are necessary to reduce the Agency's operations budget in order to meet the balanced budget requirements as mandated by State law. Without the recommended revisions, the Agency is at risk of exhausting its State appropriated dollars required to maintain the State's Medicaid Program.
ANALYSIS:
Rules are amended to restrict to restrict the timely filing of for reimbursement from 12 months to six months. These changes are needed in order to reduce the overall costs of the Medicaid Program.
CONTACT PERSON:
Tywanda Cox at (405)522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED AS SET FORTH IN 75 O.S., SECTION 253(F), AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR OR JULY 1, 2015, WHICHEVER IS LATER:

SUBCHAPTER 3. GENERAL PROVIDER POLICIES

PART 1. GENERAL SCOPE AND ADMINISTRATION

317:30-3-11. Timely filing limitation

(a) ~~According to federal regulations, claims must be received by the Fiscal Agent within one year from the date of service.~~According to federal regulations, the Authority must require providers to submit all claims no later than 12 months from the date of service. Federal regulations provide no exceptions to this requirement. For dates of service provided on or after July 1, 2015, the timely filing limit, for SoonerCare reimbursement, is 6 months from the date of service. Payment will not be made on claims when more than ~~12~~6 months have elapsed between the date the service was provided and the date of receipt of the claim by the Fiscal Agent. ~~Federal regulations provide no exceptions to this requirement. Because of this requirement, caution should be exercised to assure claims are~~

~~filed timely in all cases where an application for assistance has been filed. The following procedure is recommended. If the service is approaching the one year time limit and a case number has not been assigned and an approval for medical assistance has not been received, or there is a case number but the medical assistance case has not been approved, or a provider contract has not been approved, file a claim. The claim will be denied, however, the denial is proof of timely filing.~~A denied claim can be considered proof of timely filing.

(b) Claims may be submitted anytime during the month.

(c) To be eligible for payment under ~~Medicaid~~SoonerCare, claims for coinsurance and/or deductible must meet the Medicare timely filing requirements. If a claim for payment under Medicare has been filed in a timely manner, the Fiscal Agent must receive a ~~Medicaid~~SoonerCare claim relating to the same services within 90 days after the agency or the provider receives notice of the disposition of the Medicare claim.

317:30-3-11.1. Resolution of claim payment

(a) After the submission of a claim from a provider which had been adjudicated by the Authority, a provider may resubmit the claim under the following rules.

(b) The provider must have submitted the claim initially under the timely filing requirements found at OAC 317:30-3-11.

(c) ~~The provider's resubmission of the claim must be received by the Oklahoma Health Care Authority no later than 24 months from the date of service.~~For dates of service provided on or after July 1, 2015, the provider's resubmission of the claim must be received by the Oklahoma health Care Authority no later than 12 months from the date of service. The only exceptions to the ~~24~~12 month resubmission claim deadline are the following:

(1) administrative agency corrective action or agency actions taken to resolve a dispute, or

(2) reversal of the eligibility determination, or

(3) investigation for fraud or abuse of the provider, or

(4) court order or hearing decision.

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 3. HOSPITALS

317:30-5-44. Medicare eligible individuals

Payment is made to hospitals for services to Medicare eligible individuals as set forth in this section.

(1) Claims filed with Medicare automatically cross over to OHCA. The explanation of Medicare Benefits (EOMB) reflects a message that the claim was referred to SoonerCare. If such a message is not present, a claim for coinsurance and deductible must be filed with the OHCA within 90 days of the date of Medicare payment ~~or~~and within one year of the date of service in order to be considered timely filed.

(2) If payment is denied by Medicare and the service is a SoonerCare covered service, mark the claim "denied by Medicare" and attach the Medicare EOMB showing the reason for denial.

(3) In certain circumstances, some claims do not automatically "cross over". Providers must file a claim for coinsurance and/or deductible to SoonerCare within 90 days of the Medicare payment ~~or~~and within one year from the date of service.

(4) For individuals who have exhausted Medicare Part A benefits, claims must be accompanied by a statement from the Medicare Part A intermediary showing the date benefits were exhausted.

PART 83. RESIDENTIAL BEHAVIOR MANAGEMENT SERVICES IN FOSTER CARE SETTINGS

317:30-5-744. Billing

~~(a) Claims must not be submitted prior to OHCA's determination of the member's eligibility, and must not be submitted later than 1 year after the date of service. If the eligibility of the individual has not been determined after ten months from the date of service, a claim should be submitted in order to assure that the claim is timely filed and reimbursement from SoonerCare funds can be made should the individual be determined eligible at a later date.~~

(a) Claims must be submitted in accordance with guidelines found at OAC 317:30-3-11 and 317:30-3-11.1.

(b) Claims for dually eligible individuals (Medicare/Medicaid) should be filed directly with the OHCA.

PART 87. BIRTHING CENTERS

317:30-5-893. Billing

Billing for birthing center services will be on HCFA-1500. ~~Under Medicaid, the claim must be received by OHCA within 12 months of the date of service in order to be eligible for payment. If the eligibility of the individual has not been determined after ten months from the date of services, a claim should be submitted in order to assure that the claim is timely filed and reimbursement from Title XIX funds can be made should the individual be determined eligible at a later date.~~ Claims must be submitted in accordance with guidelines found at OAC 317:30-3-11 and 317:30-3-11.1.

PART 97. CASE MANAGEMENT SERVICES FOR UNDER AGE 18 AT RISK OF OR IN THE TEMPORARY CUSTODY OR SUPERVISION OF OFFICE OF JUVENILE AFFAIRS

317:30-5-973. Billing

Billing for case management services is on Form HCFA-1500. ~~Claims should not be submitted until Medicaid eligibility of the individual has been determined. However, a claim must be received by OHCA within 12 months of the date of service. If the eligibility of the individual has not~~

~~been determined after ten months from the date of service, a claim should be submitted in order to assure that the claim is timely filed and reimbursement from Title XIX funds can be made should the individual be determined eligible at a later date.~~ Claims must be submitted in accordance with guidelines found at OAC 317:30-3-11 and 317:30-3-11.1.

PART 99. CASE MANAGEMENT SERVICES FOR UNDER AGE 18 IN EMERGENCY, TEMPORARY OR PERMANENT CUSTODY OR SUPERVISION OF THE DEPARTMENT OF HUMAN SERVICES

317:30-5-993. Billing

Billing for case management services is on Form HCFA-1500. ~~Claims should not be submitted until Medicaid eligibility of the individual has been determined. However, a claim must be received by OHCA within 12 months of the date of service. If the eligibility of the individual has not been determined after ten months from the date of service, a claim must be submitted in order to assure that the claim is timely filed and reimbursement from Title XIX funds can be made should the individual be determined eligible at a later date.~~ Claims must be submitted in accordance with guidelines found at OAC 317:30-3-11 and 317:30-3-11.1.

PART 105. RESIDENTIAL BEHAVIORAL MANAGEMENT SERVICES IN GROUP SETTINGS AND NON-SECURE DIAGNOSTIC AND EVALUATION CENTERS

317:30-5-1045. Billing

(a) Billing is on the HCFA-1500.

~~(b) Claims should not be submitted until the Medicaid eligibility of the individual has been determined. However, a claim must be received by the fiscal agent within 12 months of the date of service. If the eligibility of the individual has not been determined after ten months from the date of service, a claim is submitted in order to assure that the claim is timely filed and reimbursement from Title XIX funds can be made should the individual be determined eligible at a later date.~~

(b) Claims must be submitted in accordance with guidelines found at OAC 317:30-3-11 and 317:30-3-11.1.

[OAR Docket #15-740; filed 7-17-15]

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

[OAR Docket #15-736]

RULEMAKING ACTION:
EMERGENCY adoption
RULES:
Subchapter 3. General Provider Policies
Part 3. General Medical Program Information
317:30-3-59. [AMENDED]
Subchapter 5. Individual Providers and Specialties
Part 1. Physicians
317:30-5-2 [AMENDED]
Part 3. Hospitals
317:30-5-42.17 [AMENDED]
(Reference APA WF # 15-04)
AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Article 10, Section 23 of the Oklahoma Constitution
ADOPTION:
June 25, 2015
APPROVED BY GOVERNOR:
June 30, 2015
EFFECTIVE:
Immediately upon Governor's approval or July 1, 2015 whichever is later
EXPIRATION:
Effective through September 14, 2016, unless superseded by another rule or disapproved by the Legislature
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
FINDING OF EMERGENCY:
The Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules and requests emergency approval of rule revisions to the Agency's payment coverage guidelines. In order to protect the public health, safety and welfare, the Agency finds it necessary to amend certain payment coverage guidelines for removal of benign skin lesions for adults and for adult sleep studies.
ANALYSIS:
These emergency revisions are necessary to reduce the Agency's operations budget in order to meet the balanced budget requirements as mandated by State law. Without the recommended revisions, the Agency is at risk of exhausting its State appropriated dollars required to maintain the State's Medicaid Program.
The proposed policy revisions eliminate coverage for removal of benign skin lesions for adults and eliminate coverage for adult sleep studies.
CONTACT PERSON:
Tywanda Cox at (405)522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED AS SET FORTH IN 75 O.S., SECTION 253(F), AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR OR JULY 1, 2015, WHICHEVER IS LATER:

SUBCHAPTER 3. GENERAL PROVIDER POLICIES

PART 3. GENERAL MEDICAL PROGRAM INFORMATION

317:30-3-59. General program exclusions - adults

The following are excluded from SoonerCare coverage for adults:

(1) Inpatient admission for diagnostic studies that could be performed on an outpatient basis.

(2) Services or any expense incurred for cosmetic surgery.

(3) Services of two physicians for the same type of service to the same member on the same day, except when

supplemental skills are required and different specialties are involved.

(4) Refractions and visual aids.

(5) Pre-operative care within 24 hours of the day of admission for surgery and routine post-operative care as defined under the global surgery guidelines promulgated by Current Procedural Terminology (CPT) and the Centers for Medicare and Medicaid Services (CMS).

(6) Sterilization of members who are under 21 years of age, mentally incompetent, or institutionalized or reversal of sterilization procedures for the purposes of conception.

(7) Non-therapeutic hysterectomies.

(8) Induced abortions, except when certified in writing by a physician that the abortion was necessary due to a physical disorder, injury or illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would place the woman in danger of death unless an abortion is performed, or that the pregnancy is the result of an act of rape or incest. (Refer to OAC 317:30-5-6 or 317:30-5-50.)

(9) Medical services considered experimental or investigational.

(10) Services of a Certified Surgical Assistant.

(11) Services of a Chiropractor. Payment is made for Chiropractor services on Crossover claims for coinsurance and/or deductible only.

(12) Services of an independent licensed Physical and/or Occupational Therapist.

(13) Services of a Psychologist.

(14) Services of an independent licensed Speech and Hearing Therapist.

(15) Payment for more than four outpatient visits per month (home or office) per member, except those visits in connection with family planning or related to emergency medical conditions.

(16) Payment for more than two nursing facility visits per month.

(17) More than one inpatient visit per day per physician.

(18) Payment for removal of benign skin lesions ~~unless medically necessary~~.

(19) Physician services which are administrative in nature and not a direct service to the member including such items as quality assurance, utilization review, treatment staffing, tumor board review or multidisciplinary opinion, dictation, and similar functions.

(20) Charges for completion of insurance forms, abstracts, narrative reports or telephone calls.

(21) Payment for the services of social workers, licensed family counselors, registered nurses or other ancillary staff, except as specifically set out in OHCA rules.

(22) Mileage.

(23) A routine hospital visit on the date of discharge unless the member expired.

(24) Direct payment to perfusionist as this is considered part of the hospital reimbursement.

(25) Inpatient chemical dependency treatment.

(26) Fertility treatment.

(27) Payment to the same physician for both an outpatient visit and admission to hospital on the same date.

(28) Sleep studies.

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 1. PHYSICIANS

317:30-5-2. General coverage by category

(a) **Adults.** Payment for adults is made to physicians for medical and surgical services within the scope of the Oklahoma Health Care Authority's (OHCA) SoonerCare program, provided the services are reasonable and necessary for the diagnosis and treatment of illness or injury, or to improve the functioning of a malformed body member. Coverage of certain services must be based on a determination made by the OHCA's medical consultant in individual circumstances.

(1) Coverage includes the following medically necessary services:

(A) Inpatient hospital visits for all SoonerCare covered stays. All inpatient services are subject to post-payment review by the OHCA, or its designated agent.

(B) Inpatient psychotherapy by a physician.

(C) Inpatient psychological testing by a physician.

(D) One inpatient visit per day, per physician.

(E) Certain surgical procedures performed in a Medicare certified free-standing ambulatory surgery center (ASC) or a Medicare certified hospital that offers outpatient surgical services.

(F) Therapeutic radiology or chemotherapy on an outpatient basis without limitation to the number of treatments per month for members with proven malignancies or opportunistic infections.

(G) Direct physician services on an outpatient basis. A maximum of four visits are allowed per month per member in office or home regardless of the number of physicians providing treatment. Additional visits per month are allowed for those services related to emergency medical conditions and for services in connection with Family Planning.

(H) Direct physician services in a nursing facility for those members residing in a long-term care facility. A maximum of two nursing facility visits per month are allowed. To receive payment for a second nursing facility visit in a month denied by Medicare for a Medicare/SoonerCare member, attach the EOMB from Medicare showing denial and mark "carrier denied coverage".

(I) Diagnostic x-ray and laboratory services.

(J) Mammography screening and additional follow-up mammograms.

(K) Obstetrical care.

(L) Pacemakers and prostheses inserted during the course of a surgical procedure.

(M) Prior authorized examinations for the purpose of determining medical eligibility for programs administered by OHCA. A copy of the authorization, OKDHS form 08MA016E, Authorization for Examination and Billing, must accompany the claim.

(N) If a physician renders direct care to a member on the same day as a dialysis treatment, payment is allowed for a separately identifiable service unrelated to the dialysis.

(O) Family planning includes sterilization procedures for legally competent members 21 years of age and over who voluntarily request such a procedure and execute the federally mandated consent form with his/her physician. A copy of the consent form must be attached to the claim form. Separate payment is allowed for the insertion and/or implantation of contraceptive devices during an office visit. Certain family planning products may be obtained through the Vendor Drug Program. Reversal of sterilization procedures for the purposes of conception is not allowed. Reversal of sterilization procedures are allowed when medically indicated and substantiating documentation is attached to the claim.

(P) Genetic counseling.

(Q) Laboratory testing (such as complete blood count (CBC), platelet count, or urinalysis) for monitoring members receiving chemotherapy, radiation therapy, or medications that require monitoring during treatment.

(R) Payment for ultrasounds for pregnant women as specified in OAC 317:30-5-22.

(S) Payment to the attending physician in a teaching medical facility for compensable services when the physician signs as claimant and renders personal and identifiable services to the member in conformity with federal regulations.

(T) Payment to clinical fellow or chief resident in an outpatient academic setting when the following conditions are met:

(i) Recognition as clinical faculty with participation in such activities as faculty call, faculty meetings, and having hospital privileges;

(ii) Board certification or completion of an accredited residency program in the fellowship specialty area;

(iii) Hold unrestricted license to practice medicine in Oklahoma;

(iv) If Clinical Fellow, practicing during second or subsequent year of fellowship;

(v) Seeing members without supervision;

(vi) Services provided not for primary purpose of medical education for the clinical fellow or chief resident;

(vii) Submit billing in own name with appropriate Oklahoma SoonerCare provider number;

(viii) Additionally if a clinical fellow practicing during the first year of fellowship, the clinical fellow must be practicing within their area of primary training. The services must be performed within the context of their primary specialty and only to the extent as allowed by their accrediting body.

(U) Payment to the attending physician for the services of a currently Oklahoma licensed physician in training when the following conditions are met.

(i) Attending physician performs chart review and signs off on the billed encounter;

(ii) Attending physician is present in the clinic/or hospital setting and available for consultation;

(iii) Documentation of written policy and applicable training of physicians in the training program regarding when to seek the consultation of the attending physician.

(V) Payment to the attending physician for the outpatient services of an unlicensed physician in a training program when the following conditions are met:

(i) The member must be at least minimally examined by the attending physician or a licensed physician under the supervision of the attending physician;

(ii) The contact must be documented in the medical record.

(W) The payment to a physician for medically directing the services of a CRNA or for the direct supervision of the services of an Anesthesiologist Assistant (AA) is limited. The maximum allowable fee for the services of both providers combined is limited to the maximum allowable had the service been performed solely by the anesthesiologist.

(X) One pap smear per year for women of child bearing age. Two follow-up pap smears are covered when medically indicated.

(Y) Medically necessary solid organ and bone marrow/stem cell transplantation services for children and adults are covered services based upon the conditions listed in (i)-(iv) of this subparagraph:

(i) Transplant procedures, except kidney and cornea, must be prior authorized to be compensable.

(ii) To be prior authorized all procedures are reviewed based on appropriate medical criteria.

(iii) To be compensable under the SoonerCare program, all organ transplants must be performed at a facility which meets the requirements contained in Section 1138 of the Social Security Act.

(iv) Procedures considered experimental or investigational are not covered.

(Z) Donor search and procurement services are covered for transplants consistent with the methods used by the Medicare program for organ acquisition costs.

(i) Donor expenses incurred for complications are covered only if they are directly and immediately attributable to the donation procedure.

(ii) Donor expenses that occur after the 90 day global reimbursement period must be submitted to the OHCA for review.

(AA) Total parenteral nutritional therapy (TPN) for identified diagnoses and when prior authorized.

(BB) Ventilator equipment.

(CC) Home dialysis equipment and supplies.

(DD) Ambulatory services for treatment of members with tuberculosis (TB). This includes, but is not limited to, physician visits, outpatient hospital services, rural health clinic visits and prescriptions. Drugs prescribed for the treatment of TB beyond the prescriptions covered under SoonerCare require prior authorization by the University of Oklahoma College of Pharmacy Help Desk using form "Petition for TB Related Therapy". Ambulatory services to members infected with TB are not limited to the scope of the SoonerCare program, but require prior authorization when the scope is exceeded.

(EE) Smoking and Tobacco Use Cessation Counseling for treatment of individuals using tobacco.

(i) Smoking and Tobacco Use Cessation Counseling consists of the 5As:

(I) Asking the member to describe their smoking use;

(II) Advising the member to quit;

(III) Assessing the willingness of the member to quit;

(IV) Assisting the member with referrals and plans to quit; and

(V) Arranging for follow-up.

(ii) Up to eight sessions are covered per year per individual.

(iii) Smoking and Tobacco Use Cessation Counseling is a covered service when performed by physicians, physician assistants, advanced registered nurse practitioners, certified nurse midwives, dentists, Oklahoma State Health Department and FQHC nursing staff, and Maternal/Child Health Licensed Clinical Social Workers with a certification as a Tobacco Treatment Specialist Certification (CTTS). It is reimbursed in addition to any other appropriate global payments for obstetrical care, PCP care coordination payments, evaluation and management codes, or other appropriate services rendered. It must be a significant, separately identifiable service, unique from any other service provided on the same day.

(iv) Chart documentation must include a separate note and signature along with the member specific information addressed in the five steps and the time spent by the practitioner performing the counseling. Anything under three minutes is considered part of a routine visit.

(FF) Immunizations as specified by the Advisory Committee on Immunization Practices (ACIP) guidelines.

(GG) Genetic testing is covered when medically necessary. Genetic testing may be considered medically necessary when the following conditions are met:

(i) The member displays clinical features of a suspected genetic condition or is at direct risk of inheriting the genetic condition in question (e.g., a causative familial variant has been identified); and

(ii) Clinical studies published in peer-reviewed literature have established strong evidence that the result of the test will positively impact the clinical decision-making or clinical outcome for the member; and

(iii) The testing method is proven to be scientifically valid for the identification of a specific genetically-linked inheritable disease or clinically important molecular marker; and

(iv) Documentation is provided from a licensed genetic counselor or physician with genetic expertise that supports the recommendation for testing based on a review of risk factors, clinical scenario, and family history.

(2) General coverage exclusions include the following:

(A) Inpatient admission for diagnostic studies that could be performed on an outpatient basis.

(B) Services or any expense incurred for cosmetic surgery.

(C) Services of two physicians for the same type of service to the same member on the same day, except when supplemental skills are required and different specialties are involved.

(D) Refractions and visual aids.

(E) Pre-operative care within 24 hours of the day of admission for surgery and routine post-operative care as defined under the global surgery guidelines promulgated by Current Procedural Terminology (CPT) and the Centers for Medicare and Medicaid Services (CMS).

(F) Payment to the same physician for both an outpatient visit and admission to hospital on the same date.

(G) Sterilization of members who are under 21 years of age, mentally incompetent, or institutionalized or reversal of sterilization procedures for the purposes of conception.

(H) Non-therapeutic hysterectomies.

(I) Medical services considered experimental or investigational.

(J) Payment for more than four outpatient visits per month (home or office) per member, except those visits in connection with family planning or related to emergency medical conditions.

(K) Payment for more than two nursing facility visits per month.

(L) More than one inpatient visit per day per physician.

(M) Physician services which are administrative in nature and not a direct service to the member including such items as quality assurance, utilization review, treatment staffing, tumor board review or multidisciplinary opinion, dictation, and similar functions.

(N) Charges for completion of insurance forms, abstracts, narrative reports or telephone calls.

(O) Payment for the services of social workers, licensed family counselors, registered nurses or other ancillary staff, except as specifically set out in OHCA rules.

(P) Induced abortions, except when certified in writing by a physician that the abortion was necessary due to a physical disorder, injury or illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would place the woman in danger of death unless an abortion is performed, or that the pregnancy is the result of an act of rape or incest. (Refer to OAC 317:30-5-6 or 317:30-5-50.)

(Q) Speech and Hearing services.

(R) Mileage.

(S) A routine hospital visit on the date of discharge unless the member expired.

(T) Direct payment to perfusionist as this is considered part of the hospital reimbursement.

(U) Inpatient chemical dependency treatment.

(V) Fertility treatment.

(W) Payment for removal of benign skin lesions ~~unless medically necessary~~.

(X) Sleep studies.

(b) **Children.** Payment is made to physicians for medical and surgical services for members under the age of 21 within the scope of the Authority's SoonerCare program, provided the services are medically necessary for the diagnosis and treatment of illness or injury, or to improve the functioning of a malformed body member. Medical and surgical services for children are comparable to those listed for adults. For services rendered to a minor child, the child's parent or court-appointed legal guardian must provide written authorization prior to the service being rendered, unless there is an explicit state or federal exception to this requirement. In addition to those services listed for adults, the following services are covered for children.

(1) **Pre-authorization of inpatient psychiatric services.** All inpatient psychiatric services for members under 21 years of age must be prior authorized by an agency designated by the Oklahoma Health Care Authority. All psychiatric services are prior authorized for an approved length of stay. Non-authorized inpatient psychiatric services are not SoonerCare compensable.

(A) All residential and acute psychiatric services are authorized based on the medical necessity criteria as described in OAC 317:30-5-95.25,317:30-5-95.27 and 317:30-5-95.29.

(B) Out of state placements are not authorized unless it is determined that the needed medical services are more readily available in another state or it is a general practice for members in a particular border locality to use resources in another state. If a medical emergency occurs while a member is out of the State, treatment for medical services is covered as if provided within the State. A prime consideration for placements is proximity to the family or guardian in order to involve the family or guardian in discharge and reintegration planning.

(2) **General acute care inpatient service limitations.** All general acute care inpatient hospital services for members under the age of 21 are not limited. All inpatient care must be medically necessary.

(3) **Procedures for requesting extensions for inpatient services.** The physician and/or facility must provide necessary justification to enable OHCA, or its designated agent, to make a determination of medical necessity and appropriateness of treatment options. Extension requests for psychiatric admissions must be submitted to the OHCA or its designated agent. Extension requests must contain the appropriate documentation validating the need for continued treatment in accordance with the medical necessity criteria described in OAC 317:30-5-95.26, 317:30-5-95.28 and 317:30-5-95.30. Requests must be made prior to the expiration of the approved inpatient stay. All decisions of OHCA or its designated agent are final.

(4) **Utilization control requirements for psychiatric beds.** Utilization control requirements for inpatient psychiatric services for members under 21 years of age apply to all hospitals and residential psychiatric treatment facilities.

(5) **Early and periodic screening diagnosis and treatment program.** Payment is made to eligible providers for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) of members under age 21. These services include medical, dental, vision, hearing and other necessary health care. Refer to OAC 317:30-3-65.2 through 317:30-3-65.11 for specific guidelines.

(6) **Child abuse/neglect findings.** Instances of child abuse and/or neglect discovered through screenings and regular exams are to be reported in accordance with State Law. Section 7103 of Title 10 of the Oklahoma Statutes mandates reporting suspected abuse or neglect to the Oklahoma Department of Human Services. Section 7104 of Title 10 of the Oklahoma Statutes further requires reporting of criminally injurious conduct to the nearest law enforcement agency.

(7) **General exclusions.** The following are excluded from coverage for members under the age of 21:

(A) Inpatient admission for diagnostic studies that could be performed on an outpatient basis.

(B) Services or any expense incurred for cosmetic surgery unless the physician certifies the procedure emotionally necessary.

(C) Services of two physicians for the same type of service to the same member on the same day, except when supplemental skills are required and different specialties are involved.

(D) Pre-operative care within 24 hours of the day of admission for surgery and routine post-operative care as defined under the global surgery guidelines promulgated by Current Procedural Terminology (CPT) and the Centers for Medicare and Medicaid Services (CMS).

(E) Payment to the same physician for both an outpatient visit and admission to hospital on the same date.

(F) Sterilization of members who are under 21 years of age, mentally incompetent, or institutionalized or reversal of sterilization procedures for the purposes of conception.

(G) Non-therapeutic hysterectomies.

(H) Medical Services considered experimental or investigational.

(I) More than one inpatient visit per day per physician.

(J) Induced abortions, except when certified in writing by a physician that the abortion was necessary due to a physical disorder, injury or illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would place the woman in danger of death unless an abortion is performed, or that the pregnancy is the result of an act of rape or incest. (Refer to OAC 317:30-5-6 or 317:30-5-50.)

(K) Physician services which are administrative in nature and not a direct service to the member including such items as quality assurance, utilization review, treatment staffing, tumor board review or multidisciplinary opinion, dictation, and similar functions.

(L) Payment for the services of social workers, licensed family counselors, registered nurses or other ancillary staff, except as specifically set out in OHCA rules.

(M) Direct payment to perfusionist as this is considered part of the hospital reimbursement.

(N) Charges for completion of insurance forms, abstracts, narrative reports or telephone calls.

(O) Mileage.

(P) A routine hospital visit on date of discharge unless the member expired.

(c) **Individuals eligible for Part B of Medicare.** Payment is made utilizing the OHCA allowable for comparable services. Claims filed with Medicare Part B should automatically cross over to OHCA. The explanation of Medicare Benefits (EOMB) reflects a message that the claim was referred to SoonerCare. If such a message is not present, a claim for coinsurance and deductible must be filed with the OHCA within 90 days of the date of Medicare payment or within one year of the date of service in order to be considered timely filed.

(1) In certain circumstances, some claims do not automatically "cross over". Providers must file a claim for coinsurance and/or deductible to SoonerCare within 90 days of the Medicare payment or within one year from the date of service.

(2) If payment was denied by Medicare Part B and the service is a SoonerCare covered service, mark the claim "denied by Medicare" and attach the Medicare EOMB showing the reason for the denial.

PART 3. HOSPITALS

317:30-5-42.17. Non-covered services

In addition to the general program exclusions [OAC 317:30-5-2(a)(2)] the following are excluded from coverage:

(1) Inpatient admission for diagnostic studies that could be performed on an outpatient basis.

(2) Procedures that result in sterilization which do not meet the guidelines set forth in this Chapter of rules.

(3) Reversal of sterilization procedures for the purposes of conception are not covered.

(4) Medical services considered experimental or investigational.

(5) Payment for removal of benign skin lesions ~~unless medically necessary~~ for adults.

(6) Refractions and visual aids.

(7) Charges incurred while the member is in a skilled nursing or swing bed.

(8) Sleep studies for adults.

[OAR Docket #15-736; filed 7-17-15]

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

[OAR Docket #15-739]

RULEMAKING ACTION:
EMERGENCY adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 1. Physicians
317:30-5-20. [AMENDED]
317:30-5-20.1 [NEW]
(Reference APA WF # 15-08)
AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Article 10, Section 23 of the Oklahoma Constitution; Section 1902 of Social Security Act
ADOPTION:
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SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
FINDING OF EMERGENCY:
The Agency finds that a compelling public interest exists and finds that an imminent peril exists to the preservation of the public health, safety, or welfare

which necessitates promulgation of emergency rules and requests emergency approval of rule revisions to regulate urine drug screening and testing. These emergency revisions are necessary to reduce the Agency's operations budget in order to meet the balanced budget requirements as mandated by State law. Without the recommended revisions, the Agency is at risk of exhausting its State appropriated dollars required to maintain the State's Medicaid Program.

ANALYSIS:

Rules are revised to establish policy for the appropriate administration of urine drug screening and testing, the changes align with recommended allowances based on clinical evidence and standards of care. These changes are needed in order to reduce the overall costs of the Medicaid Program.

CONTACT PERSON:

Tywanda Cox at (405)522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED AS SET FORTH IN 75 O.S., SECTION 253(F), AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR OR JULY 1, 2015, WHICHEVER IS LATER:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 1. PHYSICIANS

317:30-5-20. Laboratory services

This Section covers the guidelines for payment of laboratory services by a provider in his/her office, a certified laboratory and for a pathologist's interpretation of laboratory procedures.

(1) **~~Covered lab~~Compensable services.** Providers may be ~~paid~~reimbursed for ~~covered~~compensable clinical diagnostic laboratory services only when they personally perform or supervise the performance of the test. If a provider refers specimen to a certified laboratory or a hospital laboratory serving outpatients, the certified laboratory or the hospital must bill for performing the test.

(A) Reimbursement for lab services is made in accordance with the Clinical Laboratory Improvement Amendment of 1988 (CLIA). These regulations provide that payment may be made only for services furnished by a laboratory that meets CLIA conditions, including those furnished in physicians' offices. Eligible providers must be certified under the CLIA program and have obtained a CLIA ID number from CMS and have a current contract on file with the OHCA.

~~(B) Reimbursement rate for laboratory procedures is the lesser of the CMS National 60% fee or the local carrier's allowable (whichever is lower).~~

~~(C) Medically necessary laboratory services are covered.~~

(B) Only medically necessary laboratory services are compensable.

~~(2) **Compensable outpatient laboratory services.** Medically necessary laboratory services are covered.~~

(~~3~~2) **Non-compensable laboratory services.**

(A) Separate payment is not made for blood specimens obtained by venipuncture or urine specimens collected by a laboratory. These services are considered part of the laboratory analysis.

(B) Claims for inpatient full service laboratory procedures are not covered since this is considered a part of the hospital rate.

(C) Billing multiple units of nucleic acid detection, whether using the direct probe or amplified probe technique, for single infectious organisms when testing for more than one infectious organism in a specimen is not permissible.

(D) Laboratory services not considered medically necessary are not covered.

(~~4~~3) **Covered services by a pathologist.**

(A) A pathologist may be paid for interpretation of inpatient surgical pathology specimen~~. The appropriate CPT procedure code and modifier is used.~~ when the appropriate CPT procedure code and modifier is used.

(B) Full service or interpretation of surgical pathology for outpatient surgery performed in an outpatient hospital or Ambulatory Surgery Center setting.

(~~5~~4) **Non-compensable services by a pathologist.** The following are non-compensable pathologist services:

(A) Tissue examinations for identification of teeth and foreign objects.

(B) Experimental or investigational procedures.

(C) Interpretation of clinical laboratory procedures.

317:30-5-20.1. Urine drug screening and testing

(a) **Purpose.** Urine Drug Testing (UDT) is performed to identify aberrant behavior, undisclosed drug use and/or abuse, and verify compliance with treatment. Aberrant behaviors may include early refill requests (self-escalation), reports of "lost or stolen" medications, treatment noncompliance, and UDT that does not include the prescribed drug and may include illicit or non-prescribed controlled substances. Testing for drugs of abuse to monitor treatment compliance should be included in the treatment plan for pain management when chronic opioid therapy is involved.

(1) Qualitative drug testing is used to determine the presence or absence of a drug or drug metabolite in the urine sample and is expressed as a positive or negative result. Qualitative testing can be performed by a CLIA waived or moderate complexity test, or by a high complexity testing method.

(2) Confirmation testing is used to verify the results of a point of care test result.

(3) Quantitative drug testing is specific to the drug or metabolite being tested and is expressed as a numeric result or numeric level.

(4) Specimen validity testing is used to determine if a urine specimen has been diluted, adulterated or substituted. Specimen validity tests include, but are not limited to, creatinine, oxidants, specific gravity, urine pH, nitrates and alkaloids.

(b) **Eligible providers.** Providers performing urine drug testing should have CLIA certification specific to the level of testing performed as described in 317:30-5-20(1)(A). High complexity laboratory services must be performed by an independent laboratory. Medical devices utilized for testing must have been certified by the Food and Drug Administration as approved to perform at the level of testing being submitted for compensation.

(c) **Compensable services.** Urine drug testing must be ordered by the physician or non-physician provider and must be individualized to the patient and the patient's medical history or assessment indicators as evidenced in the medical documentation.

(1) Compensable testing must be medically indicated as evidenced by patient specific indications in the medical record.

(A) Testing is only compensable if the results will affect patient care.

(B) Drugs or drug classes being tested should reflect only those likely to be present.

(2) The frequency of urine drug screening and/or testing is determined by the patient's history, patient's physical assessment, behavioral assessment, risk assessment, treatment plan and medication history.

(3) Confirmatory testing should be performed only for the drug class represented by the positive screening. A positive screening is indicated when:

(A) The initial test is positive for medications the member is NOT reported to be taking; or

(B) Negative for prescribed medications; or

(C) Positive for illicit drugs when the member denies utilization.

(4) Quantitative testing of urine is compensable when utilized for surveillance of therapeutic levels of prescribed medications, when there is no commercially available qualitative test available, or for when the specific level must be obtained for clinical decision making, i.e. the patient is comatose or obtunded.

(d) **Non-compensable services.** The following tests are not medically necessary and therefore not covered by the OHCA:

(1) Specimen validity testing is considered a quality control measure and is not separately compensable;

(2) Drug testing for patient sample sources of saliva, oral fluids, or hair;

(3) Testing of two different specimen types (urine and blood) from the same patient on the same date of service;

(4) Drug screening and/or testing for medico-legal purposes (court ordered drug screening) or for employment purposes;

(5) Non-specific, standing panel orders for urine drug testing, custom panels specific for the ordering provider, routine testing of therapeutic drug levels or drug panels which have no impact to the member's plan of care;

(6) Scheduled and routine urine drug testing (i.e. testing should be random);

(7) Automatic confirmatory testing for any drug is not medically indicated without specific documented indications;

(8) Confirmatory testing exceeding 3 specific drug classes at an interval of greater than every 30 days will require specific documentation in the medical record to justify the medical necessity of testing; and

(9) Quantitative testing of multiple drug levels that are not specific to the patient's medical history and presentation are not allowed. Justification for testing for each individual drug or drug class level must be medically indicated as reflected in the medical record documentation.

(e) **Documentation requirement.** The medical record must contain documents to support the medical necessity of drug screening and/or testing. Medical records must be furnished on request and may include, but are not limited to, the following:

(1) A treatment plan which adheres to the appropriate state regulatory requirements;

(2) Patient history and physical;

(3) Review of previous medical records if treated by a different physician for pain management;

(4) Review of all radiographs and/or laboratory studies pertinent to the patient's condition;

(5) Current treatment plan;

(6) Opioid agreement and informed consent of UDT, as applicable;

(7) List of prescribed medications;

(8) Risk assessment, as identified by use of a validated risk assessment tool/questionnaire, with appropriate risk stratification noted and utilized;

(9) Office/provider monitoring protocols, such as random pill counts, etc.; and

(10) Review of prescription drug monitoring data or pharmacy profile as warranted.

[OAR Docket #15-739; filed 7-17-15]

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

[OAR Docket #15-738]

RULEMAKING ACTION:
EMERGENCY adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 17. Medical Suppliers
317:30-5-210.2 [AMENDED]
(Reference APA WF # 15-06)
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The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Article 10, Section 23 of the Oklahoma Constitution
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SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
FINDING OF EMERGENCY:
The Agency finds that a compelling public interest exists and finds that an imminent peril exists to the preservation of the public health, safety, or welfare which necessitates promulgation of emergency rules and requests emergency approval of rule revisions to coverage for durable medical equipment, prosthetics, orthotics and supplies (DMEPOS). These emergency revisions are necessary to reduce the Agency's operations budget in order to meet the balanced budget requirements as mandated by State law. Without the recommended revisions, the Agency is at risk of exhausting its State appropriated dollars required to maintain the State's Medicaid Program.
ANALYSIS:
Rules are amended to restrict coverage for continuous positive airway pressure devices (CPAP) to children only. These changes are needed in order to reduce the overall costs of the Medicaid Program.
CONTACT PERSON:
Tywanda Cox at (405)522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED AS SET FORTH IN 75 O.S., SECTION 253(F), AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR OR JULY 1, 2015, WHICHEVER IS LATER:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 17. MEDICAL SUPPLIERS

317:30-5-210.2. Coverage for children

(a) **Coverage.** Coverage of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) for children includes the specified coverage for adults found in OAC 317:30-5-211.1 through OAC 317:30-5-211.18. In addition the following are covered items for children only:

(1) Orthotics and prosthetics.

(2) Enteral nutrition is considered medically necessary for certain conditions in which, without the products, the member's condition would deteriorate to the point of severe malnutrition.

(A) Enteral nutrition must be prior authorized. PA requests must include:

(i) the member's diagnosis;

(ii) the impairment that prevents adequate nutrition by conventional means;

(iii) the member's weight history before initiating enteral nutrition that demonstrates oral intake without enteral nutrition is inadequate;

(iv) the percentage of the member's average daily nutrition taken by mouth and by tube; and

(v) prescribed daily caloric intake.

(B) Enteral nutrition products that are administered orally and related supplies are not covered.

(3) Continuous positive airway pressure devices (CPAP).

(b) **EPSDT.** Services deemed medically necessary and allowable under federal regulations may be covered by the EPSDT Child Health program even though those services may not be part of the SoonerCare program. These services must be prior authorized.

(c) **Medical necessity.** Federal regulations require OHCA to make the determination as to whether the service is medically necessary and do not require the provision of any items or services that the State determines are not safe and effective or that are considered experimental.

[OAR Docket #15-738; filed 7-17-15]

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

[OAR Docket #15-737]

RULEMAKING ACTION:
EMERGENCY adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 1. Physicians
317:30-5-22. [AMENDED]
317:30-5-22.1 [AMENDED]
(Reference APA WF # 15-05)
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SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
FINDING OF EMERGENCY:
The Agency finds that a compelling public interest exists and finds that an imminent peril exists to the preservation of the public health, safety, or welfare which necessitates promulgation of emergency rules and requests emergency approval of rule revisions to coverage for the high risk obstetrical program. These emergency revisions are necessary to reduce the Agency's operations budget in order to meet the balanced budget requirements as mandated by State law. Without the recommended revisions, the Agency is at risk of exhausting its State appropriated dollars required to maintain the State's Medicaid Program.
ANALYSIS:
Rules are amended to decrease the number of ultrasounds and biophysical profiles/non-stress test for high risk pregnancy members to align with the current standards of care, and to reflect the current number of ultrasounds and biophysical profiles currently being utilized. These changes are needed in order to reduce the overall costs of the Medicaid Program.
CONTACT PERSON:
Tywanda Cox at (405)522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE

CONSIDERED PROMULGATED AS SET FORTH IN 75 O.S., SECTION 253(F), AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR OR JULY 1, 2015, WHICHEVER IS LATER:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 1. PHYSICIANS

317:30-5-22. Obstetrical care

(a) Obstetrical (OB) care is billed using the appropriate CPT codes for Maternity Care and Delivery. The date of delivery is used as the date of service for charges for total obstetrical care. Inclusive dates of care should be indicated on the claim form as part of the description. Payment for total obstetrical care includes all routine care, and any ultrasounds performed by the attending physician provided during the maternity cycle unless otherwise specified in this Section. For payment of total OB care, a physician must have provided care for more than one trimester. To bill for prenatal care only, the claim is filed after the member leaves the provider's care. Payment for routine or minor medical problems will not be made separately to the OB physician outside of the ante partum visits. The ante partum care during the prenatal care period includes all care by the OB attending physician except major illness distinctly unrelated to the pregnancy.

(b) Procedures paid separately from total obstetrical care are listed in (1) - (8) of this subsection.

(1) The completion of an American College of Obstetricians and Gynecologist (ACOG) assessment form or form covering same elements as ACOG and the most recent version of the Oklahoma Health Care Authority's Prenatal Psychosocial Assessment are reimbursable when both documents are included in the prenatal record. SoonerCare allows one assessment per provider and no more than two per pregnancy.

(2) Medically necessary real time ante partum diagnostic ultrasounds will be paid for in addition to ante partum care, delivery and post partum obstetrical care under defined circumstances. To be eligible for payment, ultrasound reports must meet the guideline standards published by the American Institute of Ultrasound Medicine (AIUM).

(A) One abdominal or vaginal ultrasound will be covered in the first trimester of pregnancy. The ultrasound must be performed by a ~~board certified~~Board Certified/Board Eligible Obstetrician-Gynecologist (OB-GYN), Radiologist, or a Board Eligible/Board Certified Maternal-Fetal Medicine specialist. In addition, this ultrasound may be performed by a Nurse Midwife, Family Practice Physician or Advance Practice Nurse Practitioner in Obstetrics with a certification in obstetrical ultrasonography.

(B) One ultrasound after the first trimester will be covered. This ultrasound must be performed by a ~~board certified~~Board Eligible/Board Certified Obstetrician-Gynecologist (OB-GYN), Radiologist, or a Board Eligible/Board Certified Maternal-Fetal Medicine specialist. In addition, this ultrasound may be performed by a Nurse Midwife, Family Practice Physician or Advance Practice Nurse Practitioner in Obstetrics with certification in obstetrical ultrasonography.

~~(C) Additional ultrasounds, including detailed ultrasounds and re-evaluations of previously identified or suspected fetal or maternal anomalies must be performed by an active candidate or Board Certified diplomat in Maternal Fetal Medicine. Up to six repeat ultrasounds are allowed after which, prior authorization is required.~~

(C) One additional ultrasound is allowed by a Board Eligible/Board Certified Maternal Fetal Specialist to identify or confirm a suspected fetal/maternal anomaly. This additional ultrasound does not require prior authorization. Any subsequent ultrasounds will require prior authorization.

(3) Standby attendance at Cesarean Section (C-Section), for the purpose of attending the baby, is compensable when billed by a physician not participating in the delivery.

(4) Spinal anesthesia administered by the attending physician is a compensable service and is billed separately from the delivery.

(5) Amniocentesis is not included in routine obstetrical care and is billed separately. Payment may be made for an evaluation and management service and amniocentesis on the same date of service. This is an exception to general information regarding surgery found at OAC 317:30-5-8.

(6) Additional payment is not made for the delivery of twins. If one twin is delivered vaginally and one is delivered by C-section by the same physician, the higher level procedure is paid. If one twin is delivered vaginally and one twin is delivered by C-Section, by different physicians, each should bill the appropriate procedure codes without a modifier. Payment is not made to the same physician for both standby and assistant at C-Section.

~~(7) One non-stress test and/or biophysical profile to confirm a suspected high risk pregnancy diagnosis. The non-stress test and/or biophysical profile must be performed by an active candidate or Board Certified diplomate in Maternal Fetal Medicine.~~

(~~8~~7) Nutritional counseling in a group setting for members with gestational diabetes. Refer to OAC 317:30-5-1076(5).

(c) Assistant surgeons are paid for C-Sections which include only in-hospital post-operative care. Family practitioners who provide prenatal care and assist at C-Section bill separately for the prenatal and the six weeks postpartum office visit.

(d) Procedures listed in (1) - (5) of this subsection are not paid or not covered separately from total obstetrical care.

(1) ~~Additional non-stress tests~~Non stress test, unless the pregnancy is determined medically high risk. See OAC 317:30-5-22.1.

(2) Standby at C-Section is not compensable when billed by a physician participating in delivery.

(3) Payment is not made for an assistant surgeon for obstetrical procedures that include prenatal or post partum care.

(4) An additional allowance is not made for induction of labor, double set-up examinations, fetal stress tests, or pudendal anesthetic. Providers must not bill separately for these procedures.

(5) Fetal scalp blood sampling is considered part of the total OB care.

(e) Obstetrical coverage for children is the same as for adults with additional procedures being covered due to EPSDT provisions if determined to be medically necessary.

(1) Services deemed medically necessary and allowable under federal Medicaid regulations are covered by the EPSDT/OHCA Child Health Program even though those services may not be part of the Oklahoma Health Care Authority SoonerCare program. Such services must be prior authorized.

(2) Federal Medicaid regulations also require the State to make the determination as to whether the service is medically necessary and do not require the provision of any items or services that the State determines are not safe and effective or which are considered experimental.

317:30-5-22.1. Enhanced services for medically high risk pregnancies

(a) **Enhanced services.** Enhanced services are available for pregnant women eligible for SoonerCare and are in addition to services for uncomplicated maternity cases. Women deemed high risk based on criteria established by the OHCA may receive prior authorization for medically necessary enhanced benefits which include:

(1) prenatal at risk ante partum management;

(2) a combined maximum of ~~12~~5 fetal non stress test(s) and biophysical profiles (additional units can be prior authorized for multiple fetuses)~~; and~~ with one test per week beginning at 34 weeks gestation and continuing to 38 weeks; and

(3) a maximum of ~~6~~3 repeat ultrasounds not covered under OAC 317:30-5-22(b)(2).

(b) **Prior authorization.** To receive enhanced services, the following documentation must be received by the OHCA Medical Authorizations Unit for review and approval:

(1) ACOG or other comparable comprehensive prenatal assessment;

(2) chart note identifying and detailing the qualifying high risk condition; and

(3) an OHCA High Risk OB Treatment Plan/Prior Authorization Request (CH-17) signed by a Board Eligible/Board Certified Maternal Fetal Medicine (MFM) specialist.

(c) **Reimbursement.** When prior authorized, enhanced benefits will be reimbursed as follows:

(1) Ante partum management for high risk is reimbursed to the primary obstetrical provider. If the primary provider of obstetrical care is not the MFM and wishes to request authorization of the ante partum management fee, the OHCA CH-17 must be signed by the primary provider of OB care. Additionally, reimbursement for enhanced at risk ante partum management is not made during an in-patient hospital stay.

(2) Non stress tests, biophysical profiles and ultrasounds (in addition to those covered under OAC 317:30-5-22(a)(2) subparagraphs (A) through (C) are reimbursed when prior authorized.

(3) Reimbursement for enhanced at risk ante partum management is not available to physicians who already qualify for enhanced reimbursement as state employed physicians.

[OAR Docket #15-737; filed 7-17-15]

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

[OAR Docket #15-744]

RULEMAKING ACTION:
EMERGENCY adoption

RULES:
Subchapter 5. Individual Providers and Specialties
Part 1. Physicians
317:30-5-22. [AMENDED]
317:30-5-22.1 [AMENDED]
(Reference APA WF # 15-07)

AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Article 10, Section 23 of the Oklahoma Constitution; Section 1902 of Social Security Act

ADOPTION:
June 25, 2015

APPROVED BY GOVERNOR:
June 30, 2015

EFFECTIVE:
Effective August 27, 2015 (amends finally adopted permanent rules scheduled to be effective August 27, 2015)

EXPIRATION:
Effective through September 14, 2016, unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:
N/A

INCORPORATIONS BY REFERENCE:
N/A

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

ANALYSIS:
In order to realize anticipated budget savings necessary to file a balanced budget, rules are amended to decrease the number of ultrasounds and biophysical profiles/non-stress test for high risk pregnancy members to align with the current standards of care, and to reflect the current number of ultrasounds and biophysical profiles currently being utilized. These changes

amend previously approved permanent rules scheduled to be effective on August 27, 2015.

CONTACT PERSON:

Tywanda Cox at (405)522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(F), WITH A LATER EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 1. PHYSICIANS

317:30-5-22. Obstetrical care

(a) Obstetrical (OB) care is billed using the appropriate CPT codes for Maternity Care and Delivery. The date of delivery is used as the date of service for charges for total obstetrical care. Inclusive dates of care should be indicated on the claim form as part of the description. Payment for total obstetrical care includes all routine care, and any ultrasounds performed by the attending physician provided during the maternity cycle unless otherwise specified in this Section. For payment of total OB care, a physician must have provided care for more than one trimester. To bill for prenatal care only, the claim is filed after the member leaves the provider's care. Payment for routine or minor medical problems will not be made separately to the OB physician outside of the ante partum visits. The ante partum care during the prenatal care period includes all care by the OB attending physician except major illness distinctly unrelated to the pregnancy.

(b) Procedures paid separately from total obstetrical care are listed in (1) - (8) of this subsection.

(1) The completion of an American College of Obstetricians and Gynecologist (ACOG) assessment form or form covering same elements as ACOG and the most recent version of the Oklahoma Health Care Authority's Prenatal Psychosocial Assessment are reimbursable when both documents are included in the prenatal record. SoonerCare allows one assessment per provider and no more than two per pregnancy.

(2) Medically necessary real time ante partum diagnostic ultrasounds will be paid for in addition to ante partum care, delivery and post partum obstetrical care under defined circumstances. To be eligible for payment, ultrasound reports must meet the guideline standards published by the American Institute of Ultrasound Medicine (AIUM).

(A) One abdominal or vaginal ultrasound will be covered in the first trimester of pregnancy. The ultrasound must be performed by a ~~board certified~~Board Eligible/Board Certified Obstetrician-Gynecologist (OB-GYN), Radiologist, or a Board Eligible/Board Certified Maternal-Fetal Medicine specialist. In addition, this ultrasound may be performed by a Nurse Midwife, Family Practice Physician or Advance Practice Nurse Practitioner in Obstetrics with a certification in obstetrical ultrasonography.

(B) One ultrasound after the first trimester will be covered. This ultrasound must be performed by a ~~board certified~~Board Eligible/Board Certified Obstetrician-Gynecologist (OB-GYN), Radiologist, or a Board Eligible/Board Certified Maternal-Fetal Medicine specialist. In addition, this ultrasound may be performed by a Nurse Midwife, Family Practice Physician or Advance Practice Nurse Practitioner in Obstetrics with certification in obstetrical ultrasonography.

~~(C) Additional ultrasounds, including detailed ultrasounds and re-evaluations of previously identified or suspected fetal or maternal anomalies must be performed by an active candidate or Board Certified diplomat in Maternal Fetal Medicine, or Board Certified Obstetrician Gynecologist (OB-GYN). Up to six repeat ultrasounds are allowed after which, prior authorization is required.~~

(C) One additional detailed ultrasound is allowed by a Board Eligible/Board Certified Maternal Fetal Specialist to identify or confirm a suspected fetal/maternal anomaly. This additional ultrasound does not require prior authorization. Any subsequent ultrasounds will require prior authorization.

(3) Standby attendance at Cesarean Section (C-Section), for the purpose of attending the baby, is compensable when billed by a physician not participating in the delivery.

(4) Spinal anesthesia administered by the attending physician is a compensable service and is billed separately from the delivery.

(5) Amniocentesis is not included in routine obstetrical care and is billed separately. Payment may be made for an evaluation and management service and amniocentesis on the same date of service. This is an exception to general information regarding surgery found at OAC 317:30-5-8.

(6) Additional payment is not made for the delivery of twins. If one twin is delivered vaginally and one is delivered by C-section by the same physician, the higher level procedure is paid. If one twin is delivered vaginally and one twin is delivered by C-Section, by different physicians, each should bill the appropriate procedure codes without a modifier. Payment is not made to the same physician for both standby and assistant at C-Section.

~~(7) One non-stress test and/or biophysical profile to confirm a suspected high risk pregnancy diagnosis. The non-stress test and/or biophysical profile must be performed by an active candidate or Board Certified diplomate in Maternal Fetal Medicine, or Board Certified Obstetrician Gynecologist (OB-GYN).~~

(~~8~~7) Nutritional counseling in a group setting for members with gestational diabetes. Refer to OAC 317:30-5-1076(5).

(c) Assistant surgeons are paid for C-Sections which include only in-hospital post-operative care. Family practitioners who provide prenatal care and assist at C-Section bill separately for the prenatal and the six weeks postpartum office visit.

(d) Procedures listed in (1) - (5) of this subsection are not paid or not covered separately from total obstetrical care.

(1) ~~Additional non-stress tests~~Non stress test, unless the pregnancy is determined medically high risk. See OAC 317:30-5-22.1.

(2) Standby at C-Section is not compensable when billed by a physician participating in delivery.

(3) Payment is not made for an assistant surgeon for obstetrical procedures that include prenatal or post partum care.

(4) An additional allowance is not made for induction of labor, double set-up examinations, fetal stress tests, or pudendal anesthetic. Providers must not bill separately for these procedures.

(5) Fetal scalp blood sampling is considered part of the total OB care.

(e) Obstetrical coverage for children is the same as for adults with additional procedures being covered due to EPSDT provisions if determined to be medically necessary.

(1) Services deemed medically necessary and allowable under federal Medicaid regulations are covered by the EPSDT/OHCA Child Health Program even though those services may not be part of the Oklahoma Health Care Authority SoonerCare program. Such services must be prior authorized.

(2) Federal Medicaid regulations also require the State to make the determination as to whether the service is medically necessary and do not require the provision of any items or services that the State determines are not safe and effective or which are considered experimental.

317:30-5-22.1. Enhanced services for medically high risk pregnancies

(a) **Enhanced services.** Enhanced services are available for pregnant women eligible for SoonerCare and are in addition to services for uncomplicated maternity cases. Women deemed high risk based on criteria established by the OHCA may receive prior authorization for medically necessary enhanced benefits which include:

(1) prenatal at risk ante partum management;

(2) a combined maximum of ~~12~~5 fetal non stress test(s) and biophysical profiles (additional units can be prior authorized for multiple fetuses~~); and~~ with one test per week beginning at 34 weeks gestation and continuing to 38 weeks; and

(3) a maximum of ~~6~~3 repeat ultrasounds not covered under OAC 317:30-5-22(b)(2).

(b) **Prior authorization.** To receive enhanced services, the following documentation must be received by the OHCA Medical Authorizations Unit for review and approval:

(1) ACOG or other comparable comprehensive prenatal assessment;

(2) chart note identifying and detailing the qualifying high risk condition; and

(3) an OHCA High Risk OB Treatment Plan/Prior Authorization Request (CH-17) signed by a Board Eligible/Board Certified Maternal Fetal Medicine (MFM) specialist, or Board Certified Obstetrician-Gynecologist (OB-GYN).

(c) **Reimbursement.** When prior authorized, enhanced benefits will be reimbursed as follows:

(1) Ante partum management for high risk is reimbursed to the primary obstetrical provider. If the primary provider of obstetrical care is not the MFM and wishes to request authorization of the ante partum management fee, the OHCA CH-17 must be signed by the primary provider of OB care. Additionally, reimbursement for enhanced at risk ante partum management is not made during an in-patient hospital stay.

(2) Non stress tests, biophysical profiles and ultrasounds (in addition to those covered under OAC 317:30-5-22(a)(2) subparagraphs (A) through (C) are reimbursed when prior authorized.

(3) Reimbursement for enhanced at risk ante partum management is not available to physicians who already qualify for enhanced reimbursement as state employed physicians.

[OAR Docket #15-744; filed 7-21-15]

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

[OAR Docket #15-735]

RULEMAKING ACTION:
EMERGENCY adoption

RULES:
Subchapter 5. Individual Providers and Specialties
Part 3. Hospitals
317:30-5-41. [AMENDED]
317:30-5-47. [AMENDED]
(Reference APA WF # 15-03)

AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Article 10, Section 23 of the Oklahoma Constitution; 42 CFR 412.20

ADOPTION:
June 25, 2015

APPROVED BY GOVERNOR:
June 30, 2015

EFFECTIVE:
Immediately upon Governor's approval or July 1, 2015, whichever is later.

EXPIRATION:
Effective through September 14, 2016, unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:
N/A

INCORPORATIONS BY REFERENCE:
N/A

FINDING OF EMERGENCY:
The Agency finds that a compelling public interest exists and finds that an imminent peril exists to the preservation of the public health, safety, or welfare which necessitates promulgation of emergency rules and requests emergency approval of rule revisions to the agency's individual provider and specialties guidelines. The proposed policy revisions clarify reimbursement methodology

for DRG hospitals. These emergency revisions are necessary to reduce the Agency's operations budget in order to meet the balanced budget requirements as mandated by State law. Without the recommended revisions, the Agency is at risk of exhausting its State appropriated dollars required to maintain the State's Medicaid Program.

ANALYSIS:

The proposed policy revisions clarify reimbursement methodology for DRG hospitals. Rules state that covered inpatient services provided to eligible members admitted to acute care and critical access hospitals will be reimbursed the lesser of the billed charges or the DRG amount. These emergency revisions are necessary to reduce the Agency's operations budget in order to meet the balanced budget requirements as mandated by State law. Without the recommended revisions, the Agency is at risk of exhausting its State appropriated dollars required to maintain the State's Medicaid Program.

CONTACT PERSON:

Tywanda Cox at (405)522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED AS SET FORTH IN 75 O.S., SECTION 253(F), AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR OR JULY 1, 2015, WHICHEVER IS LATER:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 3. HOSPITALS

317:30-5-41. Inpatient hospital coverage/limitations

(a) Covered hospital inpatient services are those medically necessary services which require an inpatient stay ordinarily furnished by a hospital for the care and treatment of inpatients and which are provided under the direction of a physician or dentist in an institution approved under OAC:317:30:5-40.1(a) or (b). ~~Effective October 1, 2005, claims for inpatient admissions provided on or after October 1st in acute care or critical access hospitals are reimbursed utilizing a Diagnosis Related Groups (DRG) methodology.~~Claims for inpatient admissions in acute care or critical access hospitals are reimbursed the lesser of the billed charges or the Diagnosis Related Groups (DRG) amount.

(b) **Inpatient status.** OHCA considers a member an inpatient when the member is admitted to the hospital and is counted in the midnight census. In situations when a member inpatient admission occurs and the member dies, is discharged following an obstetrical stay, or is transferred to another facility on the day of admission, the member is also considered an inpatient of the hospital.

(1) **Same day admission.** If a member is admitted and dies before the midnight census on the same day of admission, the member is considered an inpatient.

(2) **Same day admission/discharge ~~C~~- obstetrical and newborn stays.** A hospital stay is considered inpatient stay when a member is admitted and delivers a baby, even when the mother and baby are discharged on the date of admission (i.e., they are not included in the midnight census). This rule applies when the mother and/or newborn are transferred to another hospital.

(3) **Same day admission/discharges other than obstetrical and newborn stays.** In the event a member is admitted as an inpatient, but is determined to not qualify for an inpatient payment based on OHCA criteria, the hospital may bill on an outpatient claim for the ancillary services provided during that time.

(4) **Discharges and Transfers.** A hospital inpatient is considered discharged from a hospital paid under the DRG-based payment system when:

~~(A) **Discharges.** A hospital inpatient is considered discharged from a hospital paid under the DRG-based payment system when:~~

(~~i~~A) The patient is formally released from the hospital; or

(~~ii~~B) The patient dies in the hospital; or

(~~iii~~C) The patient is transferred to a hospital that is excluded from the DRG-based payment system, or transferred to a distinct part psychiatric or rehabilitation unit of the same hospital. Such instances will result in two or more claims. Effective January 1, 2007, distinct part psychiatric and rehabilitation units excluded from the Medicare Prospective Payment System (PPS) of general medical surgical hospitals will require a separate provider identification number.

317:30-5-47. Reimbursement for inpatient hospital services

Reimbursement will be made for inpatient hospital services ~~rendered on or after October 1, 2005,~~ in the following manner:

(1) Covered inpatient services provided to eligible SoonerCare members admitted to in-state acute care and critical access hospitals will be reimbursed ~~at a prospectively set rate which compensates hospitals an amount per discharge for discharges classified according to the Diagnosis Related Group (DRG) methodology. For each SoonerCare member's stay, a peer group base rate is multiplied by the relative weighting factor for the DRG which applies to the hospital stay.~~ the lesser of the billed charges or the Diagnosis Related Group (DRG) amount. In addition to the billed charges or DRG payment, whichever is less, an outlier payment may be made to the hospital for very high cost stays. Additional outlier payment is applicable if ~~the DRG payment~~ either the amount billed by the hospital or DRG payment, whichever applies, is less than a threshold amount of the hospital cost. Each inpatient hospital claim is tested to determine whether the claim qualified for a cost outlier payment. Payment is equal to a percentage of the cost after the threshold is met.

(2) ~~The DRG payment~~The lesser of the billed charges or DRG amount and outlier, if applicable, represent full reimbursement for all non-physician services provided during the inpatient stay. Payment includes but is not limited to:

(A) laboratory services;

(B) prosthetic devices, including pacemakers, lenses, artificial joints, cochlear implants, implantable pumps;

(C) technical component on radiology services;

(D) transportation, including ambulance, to and from another facility to receive specialized diagnostic and therapeutic services;

(E) pre-admission diagnostic testing performed within 72 hours of admission; and

(F) organ transplants.

(3) Hospitals may submit a claim for payment only upon the final discharge of the patient or upon completion of a transfer of the patient to another hospital.

(4) Covered inpatient services provided to eligible members of the Oklahoma SoonerCare program, when treated in out-of-state hospitals will be reimbursed in the same manner as in-state hospitals.

(5) Cases which indicate transfer from one acute care hospital to another will be monitored under a retrospective utilization review policy to help ensure that payment is not made for inappropriate transfers.

(6) The transferring hospital will be paid the lesser of the calculated transfer fee or the DRG base payment amount for a non-transfer. No outlier payment will be made on transfers.

(~~6~~7) If the transferring or discharge hospital or unit is exempt from the DRG, that hospital or unit will be reimbursed according to the method of payment applicable to the particular facility or units.

(~~7~~8) Covered inpatient services provided in out-of-state specialty hospitals may be reimbursed at a negotiated rate not to exceed 100% of the cost to provide the service. Negotiation of rates will only be allowed when the OHCA determines that the specialty hospital or specialty unit provides a unique (non-experimental) service required by SoonerCare members and the provider will not accept the DRG payment rate. Prior authorization is required.

(~~8~~9) New providers entering the SoonerCare program will be assigned a peer group and will be reimbursed at the peer group base rate for the DRG payment methodology or the statewide median rate for per diem methods.

(~~9~~10) When services are delivered via telemedicine to hospital inpatients, the originating site facility fee will be paid outside the DRG payment.

(~~10~~11) All inpatient services are reimbursed per the ~~DRG~~ methodology described in this section and/or as approved under the Oklahoma State Medicaid Plan.

[OAR Docket #15-735; filed 7-17-15]

TITLE 380. DEPARTMENT OF LABOR
CHAPTER 80. ALTERNATIVE FUELS PROGRAM

[OAR Docket #15-734]

RULEMAKING ACTION:
EMERGENCY adoption
RULES:
Chapter 80. Alternative Fuels Program [NEW]
AUTHORITY:
Department of Labor; 40 O.S. § 142.1, Alternative Fuels Technician Certification Act
ADOPTION:
June 24, 2015
APPROVED BY GOVERNOR:
June 30, 2015
EFFECTIVE:
June 30, 2015
EXPIRATION:
Effective through September 14, 2016 unless superseded by another rule or disapproved by the Legislature
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
Incorporated standards:
National Fire Protection Association, Pamphlet No. 52
National Fire Protection Association, Pamphlet No. 58
National Electric Code
American National Standards Institute NGV1, Requirements for Natural Gas Vehicles Refueling Connection Devices, Requirement 1-90
National Institute of Standards and Technology Handbook 44, Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices
National Institute of Standards and Technology Handbook 130, Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality
Incorporating rules:
380:80-1-2
380:80-1-7
380:80-3-3
380:80-9-2
Availability:
8:00 a.m. to 5:00 p.m., Monday through Friday, Oklahoma Department of Labor, 3017 N. Stiles, Ste. 100, Oklahoma City, OK 73105.
FINDING OF EMERGENCY:
The proposed rules are necessary as emergency measures to protect the public health, safety, and welfare. Compressed Natural Gas ("CNG") is a flammable gas that is increasingly used as a fuel for automobiles and other vehicles. CNG is stored in large quantities in pressure vessels at pressures exceeding 3,600 pounds per square inch. As with any fuel used in internal combustion engines, there is a risk of fire if CNG is stored or handled improperly.

Oklahoma has more CNG fill stations, per capita, than any other state and the number of CNG fill stations being constructed in Oklahoma is increasing. When the Oklahoma Department of Labor ("ODOL") was tasked with inspecting CNG fill stations in 2014, there were approximately 80 CNG fill stations operating in Oklahoma. There are currently 91 CNG fill stations operating in Oklahoma and it is projected that there will be over 100 CNG fill stations operating in Oklahoma by the end of calendar year 2015.

ODOL's alternative fuels inspector has completed initial inspections on every public CNG fill station in Oklahoma. The inspector has detected numerous safety issues at many CNG fill stations, both in the design and maintenance of the stations. Implementation of ODOL's proposed rules will provide ODOL's inspector with the regulatory structure necessary to conduct effective inspections and enforcement actions and will provide guidance to CNG fill station owners and operators on safe practices in the design and maintenance of CNG fill stations. The rules also create a requirement that certain CNG accidents be reported to ODOL so that ODOL may act to protect public safety.

HB1728 became effective on April 27, 2015. This bill amended the Alternative Fuels Technician Certification Act, 40 O.S. § 142.1 *et seq*. The new provisions set the standards for the construction of CNG fill stations. The insurance requirements for CNG fill station owners and for alternative fuel vehicle conversion facilities have been changed. The insurance requirements in statute now conflict with the current alternative fuels rules found at OAC 260:90. ODOL's proposed rules would eliminate this conflict.
ANALYSIS:
The proposed emergency rules establish initial administrative rules required by newly enacted legislation, Oklahoma Statutes Title 40, Section 142.1 *et seq*., effective August 21, 2014 and amended April 21, 2015, and to re-implement rules previously effective under OAC 580:55 and OAC 260:90, with modifications. The rules: address the certification requirements applicable to the qualification and certification of alternative fuel vehicle

conversion technicians, electric vehicle conversion technicians, and alternative fuel compression technicians; provide for the certification of trainees; provide for the certification of alternative fuel companies; provide for the inspection of alternative fuel fill stations; identify national standards applicable to alternative fuel vehicle conversions; provide definitions; establish program administrative procedures; and provide for program enforcement.

CONTACT PERSON:

Daniel A. Mares, Assistant General Counsel, (405) 521-6186 or daniel.mares@labor.ok.gov or James Buck, Safety Standards Director, (405) 521-6111 or james.buck@labor.ok.gov.

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

SUBCHAPTER 1. GENERAL RULES FOR COMPRESSED NATURAL GAS (CNG) EQUIPMENT

380:80-1-1. Purpose

The purpose of this chapter is to fulfill the mandate of Title 40 Section 142.2 by establishing rules in accordance with the Alternative Fuels Technician Certification Act.

380:80-1-2. Standards for alternative fuel engine fuel systems

(a) The standards for the design, construction, installation, repair, use, and inspection of alternative fuel engine fuel systems are contained in the National Fire Protection Association's pamphlets No. 52 and 58 and are adopted by reference as part of these rules.

(b) The standards for the installation, modification, repair, or performance of maintenance on motors, controllers, on-board power sources, or the drive systems of vehicles powered by electricity, including vehicles originally equipped as electric vehicles, vehicles converted from gliders, and vehicles converted from internal combustion engine vehicles, are contained in the National Electrical Code (NEC) and are adopted by reference as part of these rules.

(c) Copies of the adopted standards are available for inspection at the Oklahoma Department of Labor, 3017 N. Stiles, Ste. 100, Oklahoma City, OK 73105.

380:80-1-3. Definitions

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

"Alternative fuels" means fuels which result in comparably lower emissions of oxides of nitrogen, volatile organic compounds, carbon monoxide, or particulate matter or any combination thereof and includes CNG, LPG, LNG, methanol, ethanol, reformulated gasoline and electricity.

"Alternative fuel engine fuel systems" means an object or objects mounted, installed, attached or otherwise placed upon or within a vehicle or vehicle trailer to supply or assist in the supply of an alternative fuel to an internal combustion engine or engines.

"ANSI" means the American National Standards Institute.

"ASME" means the American Society of Mechanical Engineers.

"ASME Code" means the ASME Boiler and Pressure Vessel Code.

"Automatic dispenser" means a CNG dispenser which is operated by a member of the general public and which requires transaction authorization.

"Building" means a structure with walls and a roof resulting in the structure being totally enclosed.

"BTU" means a scientific unit of measurement equal to the quantity of heat required to raise the temperature of one pound of water one degree Fahrenheit at approximately sixty degrees Fahrenheit.

"CNG" See "Compressed natural gas" in this section.

"CNG GGE" means 5.660 pounds of CNG.

"CNG cylinder" means a cylinder or other container designed for use or used as part of a CNG system.

"CNG system" means a system of safety devices, cylinders, piping, fittings, valves, compressors, regulators, gauges, relief devices, vents, installation fixtures, and other CNG equipment intended for use or used in any building or commercial installation, or used in conjunction with a motor vehicle or mobile fuel system fueled by CNG, or any system or facilities designed to be used or used in the compression, sale, storage, transportation for delivery, or distribution of CNG in portable CNG cylinders, not including natural gas facilities, equipment, or pipelines located upstream of the inlet of a compressor devoted entirely to CNG.

"Commercial installation" means any CNG installation located on premises other than a single family dwelling used as a residence, including but not limited to a retail business establishment, school, convalescent home, hospital, retail CNG cylinder filling/exchange operation, service station, forklift refueling facility, or private motor/mobile fuel cylinder filling operation.

"Compressed natural gas" means natural gas which is a mixture of hydrocarbon gases and vapors consisting principally of methane (CH4) in gaseous form that is compressed and used, stored, sold, transported, or distributed for use by or through a CNG system.

"Compressed natural gas vehicular fuel system" means an object or objects mounted, installed, attached or otherwise placed upon or within a vehicle or vehicle trailer to supply or assist in the supply of compressed natural gas as a fuel to an internal combustion engine or engines.

"Container" means a pressure vessel, cylinder, or cylinders permanently manifolded together used to store CNG or LNG.

"Cylinder" means a container constructed, inspected, and maintained in accordance with DOT and Transport Canada regulations or ANSI/IAS NGV2, Basic Requirements for Compressed Natural Gas Vehicle (NGV) Fuel Containers

"DOT" means the United States Department of Transportation.

"Fuel supply cylinder" means a cylinder mounted upon a vehicle for storage of CNG as fuel supply to an internal combustion engine.

"Gallon Diesel Equivalent" or **"Diesel Gallon Equivalent (DGE)"** means an amount of a motor fuel that contains an average lower heating value of one hundred twenty-eight thousand (128,000) BTUs but in no case contains a lower heating value of less than one hundred twenty-four thousand (124,000) BTU's.

"Gallon Gasoline Equivalent" or **"Gasoline Gallon Equivalent (GGE)"** means an amount of a motor fuel that contains an average lower heating value of one hundred fourteen thousand (114,000) BTU's, but in no case contains a lower heating value of less than one hundred ten thousand (110,000) BTU's.

"Gallon Equivalent" means either a gallon diesel equivalent or a gallon gasoline equivalent.

"Liquefied Natural Gas (LNG)" means natural gas that has been liquefied at -259°F (-126.1°C) and stored in insulated cryogenic tanks for use as an engine fuel.

"LNG DGE" means 6.06 pounds of LNG.

"Location" means a site operated by a CNG licensee at which the licensee carries on an essential element of its CNG activities, but where the activities of the site alone do not qualify the site as an outlet.

"Manifold" means the assembly of piping and fittings used to connect cylinders.

"Mobile fuel container" means a CNG container mounted on a vehicle to store CNG as the fuel supply for uses other than motor fuel.

"Mobile fuel system" means a CNG system which supplies natural gas fuel to an auxiliary engine other than the engine used to propel the vehicle or for other uses on the vehicle.

"Motor vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails; provided, however, the definition of "motor vehicle" herein shall not include implements of husbandry.

"Natural Gas" means compressed natural gas (CNG) or liquefied Natural Gas (LNG) as defined by this regulation.

"NFPA" means The National Fire Protection Association.

"NIST" means The National Institute of Standards and Technology.

"Outlet" means a site operated by a CNG licensee at which the business conducted materially duplicates the operations for which the licensee is initially granted a license.

"Person" means an individual, sole proprietor, partnership, firm, joint venture, association, corporation, or any other business entity, a state agency or institution, county, municipality, school district, or other governmental subdivision, public trust, or licensee.

"Proved" means the act of having verified the accuracy of dispensing equipment used to measure fuel and petroleum products using a "prover".

"Prover" means a calibrated volumetric receiver or mechanical device traceable to NIST standards.

"Representative" means the individual designated by an applicant or licensee as the principal individual in authority who is responsible for actively supervising the licensee's CNG activities.

380:80-1-4. Applicability and severability

(a) The provisions of this chapter apply to pressurized components of a compressed natural gas (CNG) system, and are applicable to both engine fuel systems and compression, storage, and dispensing systems.

(b) If any item, clause, or provision of these rules is for any reason declared invalid, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

(c) Nothing in these rules shall be construed as requiring, allowing, or approving the unlicensed practice of engineering or any other professional occupation requiring licensure.

380:80-1-5. Filings required for stationary CNG installations

(a) No CNG container shall be placed into CNG service or an installation operated or used in CNG service until the requirements of this section, as applicable, are met and the facility is in compliance with the rules in this chapter and all applicable statutes, in addition to any applicable requirements of the municipality or the county where an installation is or will be located.

(b) The licensee shall submit the following to the Department of Labor at least 30 days prior to construction:

(1) Form AF-1;

(2) a plat drawing from the appropriate appraisal district identifying the facility's property boundaries;

(3) a site plan of sufficient scale that identifies:

(A) the location, types, and sizes of all containers already on site or proposed to be on site;

(B) the distances from the containers and material handling equipment to the property lines, buildings, and railroad, pipeline, or roadway rights-of-way; and

(C) any known potential hazards.

(c) The Department of Labor shall notify the applicant in writing outlining its findings. If the application is administratively denied, the applicant may modify the submission and resubmit it or may request a hearing in accordance with Administrative Procedures Act.

(d) If the Department of Labor finds after a public hearing that the proposed installation complies with the rules in this chapter and the statutes of the State of Oklahoma, and does not constitute a danger to the public health, safety, and welfare, the Department of Labor shall issue an interim approval order. The construction of the installation and the setting of the container shall not proceed until the applicant has received written notification of the interim approval order. Any interim approval order shall include a provision that such approval may be suspended or revoked if:

(1) the applicant has introduced CNG into the system prior to final approval; or

(2) a physical inspection of the installation indicates that it is not installed in compliance with the submitted

plat drawing for the installation, the rules in this chapter, or the statutes of the State of Oklahoma; or

(3) the installation constitutes a danger to the public health, safety, and welfare.

(e) If a CNG stationary installation, equipment, or appurtenances not specifically covered by the rules in this chapter has been or will be installed, the Department of Labor shall apply and require any reasonable safety provisions to ensure the CNG installation is safe for CNG service. If the affected entity disagrees with the Department of Labor's determination, the entity may request a hearing. The installation shall not be placed in CNG operation until the Department of Labor has determined the installation is safe for CNG service.

(f) The Department of Labor shall review all applications within 21 business days of receipt of all required information and shall notify the applicant in writing of any deficiencies or whether the installation has been approved.

(g) Applications shall expire and be renewed as follows:

(1) When the Department of Labor notifies an applicant of an incomplete CNG Form AF-1, the applicant has 120 calendar days from the date of the notification letter to resubmit the corrected application or the application will expire. After 120 days, a new application shall be filed should the applicant wish to reactivate Department of Labor review of the proposed installation.

(2) If the applicant requests an extension of the 120-day time period in writing, postmarked or physically delivered to the Department of Labor before the expiration date, the application may be renewed for up to 90 days as determined by the Department of Labor.

(3) If the subject installation is not commenced, with permits pulled, within one year from the date of the Department of Labor's completed review, the applicant shall resubmit the application for the Department of Labor's review.

(h) The applicant shall notify the Department of Labor in writing when the installation is ready for inspection. If the Department of Labor does not physically inspect the facility within 30 calendar days of receipt of notice that the facility is ready for inspection, the applicant may operate the facility conditionally until the initial complete inspection is made. If any safety rule violations exist at the time of the initial inspection, the applicant may be required to cease CNG operation until the applicant corrects the violations.

(i) If the Department of Labor determines the completed installation varies materially from the application originally accepted, the applicant shall correct the variance and notify the Department of Labor of the correction of the variance or resubmit the application. The Department of Labor's review of such resubmitted application shall comply with the procedure described in this section.

(j) Pressure vessels shall be subject to inspections pursuant to OAC 380:25-3.

380:80-1-6. Design and construction of cylinders, pressure vessels, and vapor recovery receivers

(a) Fuel supply cylinders shall have a rated service pressure of not less than 3,000 psig at 70 degrees Fahrenheit. Cascade storage cylinders shall have a rated service pressure of not less than 3,600 psig at 70 degrees Fahrenheit.

(b) Field welding or brazing for the repair or alteration of a cylinder or ASME pressure vessel may only be done by repair companies holding the required Certificate of Authorization from ASME or The National Board of Boiler and Pressure Vessel Inspectors, or in accordance with OAC 380:25-13-3.

380:80-1-7. Vehicle fueling connection

(a) A vehicle fueling connection shall provide for the reliable and secure connection of the fuel system cylinders to a source of compressed natural gas (CNG).

(b) The fueling connection shall be suitable for the pressure expected under normal conditions and corrosive conditions which might be encountered.

(c) The fueling connection shall prevent escape of gas when the connector is not properly engaged or becomes separated.

(d) The refueling connection on an engine fuel system shall be firmly supported, and shall:

(1) receive the fueling connector and accommodate the service pressure of the vehicle fuel system;

(2) incorporate a means to prevent the entry of dust, water, and other foreign material. If the means used is capable of sealing system pressure, it shall be capable of being depressurized before removal;

(3) have a different fueling connection for each pressure based vehicle fuel system.

(e) Any vehicle that will be fueled by an automatic dispenser shall be equipped with a fueling connection that complies with ANSI/AGA NGV1, Requirements for Natural Gas Vehicles (NGV) Refueling Connection Devices, Requirement 1-90.

380:80-1-8. Application for an exception

(a) A person may apply for an exception to the provisions of this chapter by filing a written application for an exception, along with supporting documentation, with the Department of Labor.

(b) The application shall contain the following:

(1) the section number of any applicable rules or codes;

(2) the type of relief desired, including the exception requested and any information which may assist the Department of Labor in comprehending the requested exception;

(3) a concise statement of facts which supports the applicant's request for the exception, such as the reason for the exception, the safety aspects of the exception, and the social and/or economic impact of the exception;

(4) for all stationary installations, a description of the acreage and/or address upon which the subject of the exception will be located. The description shall be in writing and shall include:

(A) a site drawing;

(B) sufficient identification of the site so that determination of property boundaries may be made;

(C) a plat from the applicable appraisal district indicating the ownership of the land; and

(D) the legal authority under which the applicant, if not the owner, is permitted occupancy.

(5) the name, business address, and telephone number of the applicant and of the authorized agent, if any;

(6) an original signature, in ink, by the party filing the application or by the authorized representative;

(7) a list of the names and addresses of all interested entities as defined in subsection (c) of this section.

(c) The applicant shall provide notice of the application for an exception as follows:

(1) The applicant shall send a copy of the written application and supporting documents by certified mail, return receipt requested, to all affected entities as specified in paragraphs (2), (3), and (4) of this subsection on the same date on which the form is filed with or sent to the Department of Labor. The applicant shall include a notice to the affected entities that any objection shall be filed with the Department of Labor within 30 calendar days of the date of postmark. The applicant shall file all return receipts with the Department of Labor as proof of notice.

(2) If an exception is requested on a stationary site, the affected entities to whom the applicant shall give notice shall include but not be limited to:

(A) persons and businesses owning or occupying property within a radius of 600 feet of the site;

(B) the city clerk or fire marshal, if the site is within municipal limits; and

(C) the Board of County Commissioners of the county where the site is located, if the site is not within any municipal limits.

(3) If an exception is requested on a nonstationary site, affected entities to whom the applicant shall give notice include but are not limited to:

(A) the Oklahoma Department of Transportation; and

(B) all CNG loading and unloading facilities utilized by the applicant.

(4) the Department of Labor may require an applicant to give notice to persons in addition to those listed in paragraphs (2) and (3) of this subsection if doing so will not prejudice the rights of any entity.

(d) Objections to the requested exception shall be in writing, filed with the Department of Labor within 30 calendar days of the postmark of the application, and shall be based on facts that tend to demonstrate that, as proposed, the exception would have an adverse effect on public health, safety, or welfare. The Department of Labor may decline to consider objections based solely on claims of diminished property or aesthetic values in the area.

(e) The Department of Labor shall review the application within 21 business days of receipt of the application. If the Department of Labor does not receive any objections from any affected entities as defined in subsection (c) of this section, the Commissioner of Labor may administratively grant the exception if the Commissioner of Labor determines that the installation, as proposed, does not adversely affect the health or safety of the public. The Department of Labor shall notify the applicant in writing after the end of the 30-day objection period and, if approved, the installation shall be commenced, with permits pulled, within one year from the date of approval and installed within two years from the date of approval. The Department of Labor shall also advise the applicant at the end of the objection period as to whether any objections were received and whether the applicant may proceed. If the Commissioner of Labor denies the exception, the Department of Labor shall notify the applicant in writing, outlining the reasons and any specific deficiencies. The applicant may modify the application to correct the deficiencies and resubmit the application or may request a hearing on the matter. To be granted a hearing, the applicant shall file a written request for hearing within 14 calendar days of receiving notice of the administrative denial.

(f) A hearing shall be held when the Department of Labor receives an objection as set out in subsection (d) of this section from any affected entity, or when the applicant requests one following an administrative denial. The Department of Labor shall mail the notice of hearing to the applicant and all objecting entities by certified mail, return receipt requested, at least 21 calendar days prior to the date of the hearing. Hearings will be held in accordance with the Administrative Procedures Act and this chapter.

(g) After hearing, exceptions to this chapter may be granted by the Department of Labor if the Department of Labor finds that granting the exception for the installation, as proposed, will not adversely affect the safety of the public.

(h) A request for an exception shall expire if it is inactive for 90 calendar days after the date of the letter in which the applicant was notified by the Department of Labor of an incomplete request. The applicant may resubmit an exception request.

380:80-1-9. Report of CNG incident/accident

(a) In case of an incident involving single release of compressed natural gas (CNG) during or following CNG transfer or during container transportation, or an accident at any location where CNG is the cause or is suspected to be the cause, the licensee owning, operating, or servicing the equipment or the installation shall notify the Department of Labor by telephone immediately after the licensee has knowledge of the incident or accident. Any loss of CNG which is less than 1.0% of the gross amount delivered, stored, or withdrawn need not be reported. Any individual reporting shall leave his or her name and telephone number where he or she can be reached for further information.

(b) The telephone notification required by this section shall be made to the Department of Labor's main telephone line and shall include the following information:

(1) date and time of the incident or accident;

(2) type of structure or equipment involved;

(3) resident's or operator's name;

(4) physical location;

(5) number of injuries and/or fatalities;

(6) whether fire, explosion, or gas leak has occurred; and
(7) whether gas is leaking.

380:80-1-10. Removal from CNG service

(a) If the Department of Labor determines that any compressed natural gas (CNG) cylinder constitutes an immediate danger to the public health, safety, and welfare, the Department of Labor shall require the immediate removal of the CNG by a properly licensed company to the extent necessary to eliminate the danger. If the Department of Labor determines that any CNG appliance, equipment, or system constitutes an immediate danger to the public health, safety, and welfare, the Department of Labor shall require the immediate disconnection by a properly licensed company of such appliance, equipment, or system from the CNG cylinder it services.
(b) If the affected entity disagrees with the placement of a warning tag, or with the Department of Labor's findings in subsection (a) of this section, the entity may request an investigation into the matter. The Department of Labor shall notify such entity of its finding. If the entity disagrees, the entity may request or the Department of Labor on its own motion may call a hearing. Such installation shall be brought into compliance or removed from service until such time as the final decision is rendered. All hearings and deadlines shall comply with the Administrative Procedures Act.

380:80-1-11. Filling unapproved containers prohibited

No licensee shall introduce compressed natural gas (CNG) into any container if he has knowledge or notice that such CNG container or system was not installed in accordance with the statutes of the State of Oklahoma, and with the rules and regulations in effect at the time of installation. Exception: This section does not apply to motor fuel or mobile fuel containers and systems installed on vehicles licensed in states other than Oklahoma, provided, however, that no licensee shall be required to introduce CNG into any container and/or system that the licensee reasonably believes to be unsafe.

SUBCHAPTER 3. DISPENSING SYSTEMS

380:80-3-1. Applicability

This subchapter applies to the design, construction, installation, and operation of cylinders, pressure vessels, compression equipment, and associated equipment used for storage and dispensing of compressed natural gas (CNG) as an engine fuel in fleet and automatic dispensing operations.

380:80-3-2. Dispenser accuracy

Each retail compressed natural gas (CNG) dispenser shall comply with the applicable weights and measures requirements of the Department of Labor, relating to dispensing accuracy.

380:80-3-3. Codes incorporated by reference

In addition to other codes adopted in this chapter, the following codes are incorporated by reference:
(1) NIST Handbook 44 Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices
(2) NIST Handbook 130 Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality

380:80-3-4. Retail dispensing of natural gas

All retail dispensing of natural gas used as a motor vehicle fuel from either fixed equipment or mobile refueling equipment, including vehicles, shall be operated and maintained in accordance with the applicable requirements of the codes adopted by this regulation.

380:80-3-5. Retail motor fuel dispensers inspection and testing

(a) All retail motor fuel dispensers (RMFDs) shall be suitable for their intended use, properly installed accurate and maintained in that condition by their owner/operator.
(b) All RMFDs shall be traceable to an active National Type Evaluation Program Certificate of Conformance prior to installation or use for commercial purposes.
(c) All RMFDs shall be capable of displaying delivered quantity in units of mass or gasoline or diesel gallon equivalents for calibration purposes. All adjustments and calibrations of RMFDs shall be made utilizing mass or gasoline or diesel gallon equivalent measurement standards.
(d) The Department of Labor shall be notified when any new or remanufactured RMFD is placed in service at a new or existing installation.
(e) No owner/operator of any RMFD shall use the RMFD for the measurement of natural gas unless it has been proved in a manner acceptable to the Department of Labor and sealed as correct by a state inspector or person or persons authorized by the Department of Labor.
(f) All RMFDs shall be proved and sealed as correct on an annual basis by either a state inspector or a person or persons authorized by the Department of Labor. Pursuant to these rules and National Institute of Standards and Technology (NIST) Handbook 44, all RMFDs must be accurate to within plus or minus 2%.
(g) If any RMFD fails to comply with any of the provisions of this regulation, a state inspector shall seal it in such a manner as to prohibit its use, and it shall remain sealed until it complies with all of the provisions of this regulation.
(h) When an RMFD is brought back into compliance with this regulation, it may only be placed back in service by a state inspector or a person or persons authorized by the Department of Labor.

380:80-3-6. Retail dispensers for compressed natural gas

(a) All CNG kept, offered, exposed for sale, or sold at retail as a vehicle fuel, shall be in units of volume (gallons or gallon equivalents).

(b) Each retail dispenser of CNG shall be labeled as "Compressed Natural Gas."

(c) All retail CNG dispensers shall be labeled with the gallon equivalent conversion factor in terms of pounds. The label shall be permanently and conspicuously displayed on the face of the dispenser and shall have the statement "1 CNG Gasoline Gallon Equivalent (GGE) is equal to 5.660 lbs of CNG".

(d) CNG shall be dispensed into vehicle fuel containers with working pressures of 3,000 PSI (20,684 kPa) or 3,600 PSI (24,821 kPa). The dispenser shall be labeled 3,000 PSI, or 3,600 PSI corresponding to the pressure of the CNG dispensed by each fueling hose.

(e) NFPA labeling requirements also apply. Refer to NFPA 52.

(f) CNG fueling nozzles for use with vehicles less than 10,000 lb (4,500kg) GVWR shall comply with ANSI/AGA/CGA NGV 1.

380:80-3-7. Retail dispensers for liquefied natural gas

(a) For the purposes of this regulation, liquefied natural gas shall be identified by the term "Liquefied Natural Gas" or "LNG."

(b) All LNG kept, offered, exposed for sale or sold at retail as a vehicle fuel shall be in units of volume (gallons or diesel gallon equivalents [DGE's]).

(c) Each retail dispenser of LNG shall be labeled as "Liquefied Natural Gas."

(d) All retail LNG dispensers shall be labeled with the gallon equivalent conversion factor in terms of pounds. The label shall be permanently and conspicuously displayed on the face of the dispenser and shall have the statement "1 LNG Diesel Gallon Equivalent (DGE) is equal to 6.06 lbs of LNG."

(e) LNG automotive fuel shall be labeled with its automotive fuel rating in accordance with 16 CFR Part 306 (e.g. LNG 95% Methane).

(f) NFPA Labeling requirements also apply. Refer to NFPA 52.

380:80-3-8. Product quality

(a) CNG shall meet the requirements of NFPA 52 for product quality and odorization.

(b) CNG and LNG shall have a minimum methane content of not less than 80%.

(c) The BTU content of natural gas gallon equivalents shall meet the following requirements:

(1) A CNG GGE shall contain a lower heating value of not less than 110,000 BTU's.

(2) An LNG DGE shall contain a lower heating value of not less than 124,000 BTU's.

(d) All equipment, including filters and strainers, used to prevent any foreign material, including compressor oil or water, from being dispensed into a vehicle container, shall be periodically serviced and maintained.

(e) Any shipper of natural gas products to be used for retail motor fuel, who ships such product into the state of Oklahoma or ships natural gas products from one point within the state to another point within the state shall make records of such shipments available to the division upon request.

380:80-3-9. Inspection by Department of Labor

The Department of Labor shall have authority to have access to and inspect any equipment, including compression equipment and storage tanks, practices or methods used by or in association with any public access compressed natural gas fueling station or pump.

SUBCHAPTER 5. ALTERNATIVE FUELS PROGRAM

380:80-5-1. Purpose

The purpose of this chapter is to fulfill the mandate of Title 40 Section 142.10 by establishing rules in accordance with the Alternative Fuels Technician Certification Act.

380:80-5-2. Definitions

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

"Administrator" means the Program Administrator and Recording Secretary of the Committee.

"Agency" means the Department of Labor.

"Alternative fuels" means fuels which result in comparably lower emissions of oxides of nitrogen, volatile organic compounds, carbon monoxide, or particulate matter or any combination thereof and includes CNG, LPG, LNG, methanol, ethanol, reformulated gasoline and electricity.

"Alternative fuels compression technician" means any person who installs, services, modifies, repairs or renovates fill stations.

"Alternative fuels equipment technician" means any person who installs, modifies, repairs or renovates equipment used in the conversion of any engines to engines fueled by alternative fuels and includes OEM vehicles either dedicated to operate on an alternative fuel or manufactured bi-fueled, i.e., capable of operating on gasoline or an alternative fuel.

"Alternative Fuels Technician Certification Act" means O.S. Title 40, Section 142.1 through 142.16.

"Alternative fuels equipment trainee" means an individual who is employed by an Oklahoma licensed alternative fuels conversion company to assist an alternative fuels equipment technician and learn to properly convert motor vehicles to operate on alternative fuels and to service and maintain such vehicles.

"Capable of operating on an alternative fuel" means any motor vehicle converted or designed to operate on an alternative fuel.

"Charge station" means the physical device that provides a connection from a power source to an electric vehicle as defined by the Electric Power Research Institute, and the Society of Automotive Engineers.

"CNG" means compressed natural gas.

"Committee" means the Committee of Alternative Fuels Technician Examiners.

"Electric vehicle technician" means any person who installs, modifies, repairs, performs maintenance on, motors, controllers, on-board power sources, or the drive systems of vehicles powered by electricity. This includes vehicles originally equipped as electric vehicles, vehicles converted from gliders, and vehicles converted from internal combustion engine vehicles.

"Engine" means the propulsion system of a motor vehicle. Nothing in this definition is meant to cover any stationary engine.

"Fill station" means the property which is directly related to the delivery of compressed natural gas and/or liquefied natural gas into the fuel tank of a motor vehicle propelled by such fuel including the compression equipment and storage vessels for such fuel at the point where the fuel is delivered.

"Glider" means a vehicle built without an engine or fuel system for the purpose of converting it to an electric vehicle.

"Liquefied petroleum gas vehicular fuel systems" means an object or objects mounted, installed, attached or otherwise placed upon or within a vehicle or vehicle trailer to supply or assist in the supply of liquefied petroleum gas as a fuel to an internal combustion engine or engines.

"LNG" means liquefied natural gas.

"LPG" means liquefied petroleum gas otherwise known as propane and/or propane autogas.

"Motor vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails; provided, however, the definition of "motor vehicle" herein shall not include implements of husbandry.

"NFPA" means the National Fire Protection Association.

"OEM" means original equipment manufacturers.

"Person" means individuals, corporations, partnerships, cooperatives, associations and governmental subdivisions.

"Trainee" means an individual who is employed by an Oklahoma licensed company to learn to properly engage in the activities regulated by this Chapter that can engage in any licensed category pursuant to this Chapter while under the direct supervision of an individual holding the appropriate license in the category of activity being performed.

"Work" means any procedure involved in the physical installation or servicing of all components used in the conversion of motor vehicles to operate on alternative fuels and the servicing of original equipment manufacturers vehicles that operate on alternative fuels, including:

(A) LPG and CNG components;
- (i) tubing;
- (ii) fittings;
- (iii) valves;
- (iv) gauges;
- (v) brackets;
- (vi) fuel lines;
- (vii) cylinders;
- (viii) tanks; and
- (ix) electronic or electrical devices.

(B) Electric vehicle components;
- (i) traction battery packs or modules;
- (ii) motor controllers;
- (iii) subsystem controllers;
- (iv) inverters;
- (v) drive motors;
- (vi) auxiliary components powered by high voltage; and
- (vii) any high voltage circuits.

"Written" or **"In writing"** means a tangible or electronic record of a document, communication or representation, including handwriting, typewriting, printing, photostating, photography, e-mail or other electronic format or record. A "signed" writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

380:80-5-3. Duties and responsibilities of the Committee of Alternative Fuels Technician Examiners

(a) The Committee shall assist and advise the agency on all matters relating to the formulation of rules and standards in accordance with the Alternative Fuels Technician Certification Act.

(b) The Department of Labor or its designee shall administer the examination to applicants for certification as alternative fuels technicians provided that such examination is in accordance with the provisions of the Alternative Fuels Technician Certification Act.

380:80-5-4. Alternative Fuels Technician Certification Revolving Fund

(a) Funds derived from the "Alternative Fuels Technician Certification Act" shall be deposited with the State Treasurer and credited to the "Alternative Fuels Technician Certification Revolving Fund".

(b) The revolving fund shall be a continuing fund not subject to fiscal year limitations and shall be under the control and management of the Agency.

(c) Expenditures from this fund shall be made pursuant to the purposes of the Alternative Fuels Technician Certification Act and shall include, but not be limited to:

(1) Payment of administrative costs and other operational costs supporting program existence; and,

(2) Payment of the costs of programs designed to promote public awareness of the alternative fuels industry; and,

(3) Expenditures for the preparation and printing of regulations, bulletins or other documents and the furnishing of copies of such documents to those persons engaged in the alternative fuels industry or the public.

SUBCHAPTER 7. TESTING, CERTIFICATION, AND RECERTIFICATION

380:80-7-1. Applications for examinations, certification or renewal of certification

(a) All applications for certification or renewal of certification shall be made in writing to the agency on forms provided, if necessary, by the agency.

(b) All applications for examination shall be made to a testing facility authorized by the Department of Labor.

(c) All applications shall be accompanied by the appropriate fee as set forth in OAC 380:80-7-4.

380:80-7-2. Contents of application

The application shall be verified, and shall contain the following information, together with any additional information that the agency may require:

(1) Name of the applicant;

(2) Mailing Address;

(3) Address of all locations that the applicant proposes to engage in the installation or modifications of vehicles using an alternative fuel; and

(4) The type of service, set forth specifically, which the applicant intends to perform and the type of permit that the applicant seeks to secure, such as LPG, CNG, LNG, EV or other alternative fuel.

380:80-7-3. Certificate required by agency

The mere filing of an application for a certificate does not of itself authorize the engaging in any of the installations or modifications of any equipment listed in the definition of "Work" in OAC 380:80-5-2.

380:80-7-4. Fees

(a) The fee schedule for the Alternative Fuels Technician Certification Act is as follows:

(1) Alternative fuels technician examination - $50;

(2) Alternative fuels technician certificate - $50;

(3) Company, partnership, or corporation - $100;

(4) Training program certification (one-time) - $500;

(5) Alternative fuels installation certification per location - $1,000;

(6) Certificate renewal (if made within 30 days after expiration):

(A) Alternative fuels technician certificate - $50;

(B) Company, partnership, or corporation - $100;

(C) Alternative fuels installation certification - $1,000 per location;

(7) Penalty for late certification renewal - $10.

(b) Form of payment from non-governmental entities and general public.

(1) Payment may be only in the form of:

(A) Certified funds;

(B) Business check;

(C) Personal check;

(D) Money order;

(E) Cashier's check; or

(F) Credit or debit card.

(2) Unguaranteed checks and 2-party checks shall not be accepted.

(3) Payment refunds. All payments received are non-refundable.

380:80-7-5. Processing and handling of applications and examinations

(a) Applicants for a certificate will first apply for an examination directly to a Department of Labor authorized testing center. Upon passing the appropriate exam, applicants may apply to the Department of Labor for a certificate.

(b) Examinations shall be administered in the following manner:

(1) Questions for an examination shall be selected from appropriate sources deemed applicable by the committee.

(2) Questions shall be multiple choice. The format of examination questions shall be varied and include multiple choice and true/false.

(3) Prior to being put into the reservoir, the questions shall be reviewed by the committee.

(4) For each examination, a total of 75 questions shall be drawn from the reservoir.

(5) Applicants testing during a scheduled examination session will not be given identical versions of the examination.

(6) Examinations for certification as alternative fuels technician shall be uniform and practical in nature as determined by the committee for alternative fuels technician certification and shall be sufficiently strict to test the qualifications and fitness of the applicants for certification.

(7) An oral examination may be administered by prior arrangement.

(8) A minimum score of eighty percent (80%) correct shall be a passing grade for all examinations.

(9) Any applicant initially failing to pass the examination shall not be permitted to take another examination for a period of thirty (30) days. Any applicant subsequently failing to pass the examination shall not be permitted to take another examination for a period of thirty (30) days.

(10) All applicants can petition the agency if they feel the agency's grade was incorrect. An applicant may petition the agency if the applicant disagrees with his or her examination grade issued by the agency.

(11) All decisions of the committee are final, subject to the provisions of the Administrative Procedures Act.

(12) Applicants that pass the examination and are notified by the Department of Labor of such must make arrangements for certification within ninety (90) days of such notification.

(13) If such applicant has not been certified within one year of notification under OAC 380:80-7-5(b)(12), the applicant must retest prior to their certification.

(14) The agency shall enforce the provisions of this section.

(c) Applicants for an alternative fuels trainee certificate shall submit an alternative fuels trainee certificate application directly to the Department of Labor.

380:80-7-6. Certificate qualification and transfer or loan of certificate

(a) The Agency issues a certificate as:

(1) An alternative fuels equipment technician to any person who has been certified by the Agency as either having successfully passed the appropriate examination or having a valid license or certificate issued by another governmental entity with licensing or certification requirements similar to those provided in the Alternative Fuels Technician Certification Act. Alternative fuels equipment technician certifications are issued for the following alternative fuels, each with a separate certification:

(A) Compressed natural gas equipment technician;

(B) Liquefied natural gas equipment technician;

(C) Liquefied petroleum gas equipment technician;

(D) Electric vehicle equipment technician;

(E) Hydrogen alternative fuel equipment technician; and

(F) Liquid alternative fuels, not derived from natural gas, equipment technician.

(2) An alternative fuels compression technician to any person who has been certified by the Agency as either having successfully passed the appropriate examination or having a valid license or certificate issued by another governmental entity with licensing or certification requirements similar to those provided in the Alternative Fuels Technician Certification Act.

(A) Level 1 (Operator) Alternative fuels compression technician certifications are issued for the following alternative fuels, each with a separate certification:

(i) Compressed natural gas compression technician;

(ii) Liquefied natural gas compression technician;

(iii) Liquefied petroleum gas compression technician;

(iv) Electric vehicle charge station technician;

(v) Hydrogen compression technician; and

(vi) Liquid alternative fuels, not derived from natural gas, compression technician.

(B) The training and examination requirements for a Level 1 (Operator) certification shall include, but not be limited to, completing a Level 1 operator training course conducted by an approved training facility with an approved training program, passing an approved Level 1 written exam, and passing an approved Level 1 skills test.

(C) Level 1 licensees shall be permitted to perform routine maintenance upon fill stations, per the fill station manufacturer or component manufacturer's routine maintenance guidelines. Level 1 licensees shall also be permitted to conduct routine safety inspections of fill stations per the fill station manufacturer or component manufacturer's safety inspection guidelines.

(D) Level 2 (Mechanic) Alternative fuels compression technician certifications are issued for the following alternative fuels, each with a separate certification:

(i) Compressed natural gas compression technician;

(ii) Liquefied natural gas compression technician;

(iii) Liquefied petroleum gas compression technician;

(iv) Electric vehicle charge station technician;

(v) Hydrogen compression technician; and

(vi) Liquid alternative fuels, not derived from natural gas, compression technician.

(E) The experience, training, and examination requirements for a Level 2 (Mechanic) certification shall include, but not be limited to:

(i) Possessing at least three total years of experience consisting of:

(I) One year of documentable experience with an associate's degree in Natural Gas Compression; or

(II) One year of documentable experience with approved industry certifications as approved by the Committee; or

(III) Three years of documentable experience without the aforementioned education or industry certification. This requires a signed affidavit from current and/or former employer(s) to verify experience.

(ii) Passing an approved Level 2 written exam.

(iii) Passing an approved Level 2 skills test.

(F) Level 2 licensees may perform all duties necessary to install, repair, replace, service, inspect, modify, and/or maintain a fill station. Nothing in these rules shall entitle a licensee to perform work without all licenses required by law.

(b) The agency shall have the authority to determine the validity of a certificate issued by another governmental entity.

(c) The agency shall assess the required certification fee and ascertain that an applicant has also complied with the provisions of the Alternative Fuels Technician Certification Act.

(d) In the case of a company, partnership, or corporation engaged in the business of installing, servicing, repairing, modifying or renovating equipment used in the conversion of engines to engines fueled by alternative fuels, a separate certificate shall be issued by the agency to that individual company, partnership, or corporation. The certificate is for the purpose of recognizing that the company, partnership, or corporation is

an authorized alternative fuels business and employs state-certified alternative fuels technicians.

(e) Any violation by a certified alternative fuels equipment or compression technician shall be deemed a violation by the certified company, partnership or corporation employing such certified technician.

(f) The agency shall issue an alternative fuels equipment installation certification to any public entity or private company, partnership or corporation that operates commercial, private or public fleets of vehicles and employs ten (10) or more auto service technicians per location. The certification shall be based on the ability of the applicant to provide their own alternative fuels technician training program, which shall be certified by the committee. This certification applies only to the conversion or service of vehicles owned or operated by such public entity or private company, partnership or corporation.

(g) All alternative fuels technician equipment or compression certificates shall be non-transferable.

(h) It shall be unlawful for any person certified pursuant to the provisions of the Alternative Fuels Technician Certification Act to loan or allow the use of such certificate by any other person.

(i) A certificate which has been expired for more than two (2) years shall not be renewed. A valid certificate may be obtained by successful completion of the appropriate examination and/or certification and other licensure requirements.

380:80-7-7. Alternative fuels trainees

(a) An alternative fuels trainee shall be employed by a licensed Oklahoma alternative fuels conversion company.

(b) A trainee shall work under the direct supervision of a licensed alternative fuels equipment technician.

(c) There shall be no more than two (2) alternative fuels trainees per licensed alternative fuels equipment technician at any licensed Oklahoma alternative fuels conversion company.

(d) An individual that holds a trainee license can engage in any licensed category pursuant to this Chapter while under the direct supervision of an individual holding the appropriate license in the category of activity being performed.

(e) An alternative fuels trainee must submit a trainee application to the Department of Labor within fifteen (15) business days of being hired by a licensed alternative fuels conversion company.

380:80-7-8. Change of address of holder of certificate or registration

Any holder of a certificate or registration issued in accordance with the provisions of the Alternative Fuels Technician Certification Act shall notify the agency in writing of any change in such holders address no later than thirty (30) days of such change.

380:80-7-9. Insurance requirements

A certificate shall not be issued to any applicant unless and until the agency has received proof of insurance as required by this section.

(1) Alternative fuels conversion companies, partnerships, or corporations engaged in the installation, modification, repair, maintenance, or renovation of alternative fuel equipment are required to have on file with the agency proof of certificate holders liability insurance coverage, with limits of not less than one million dollars ($1,000,000.00) general liability, in full force and effect covering the plant, garage, equipment and motor vehicles used in such business. Proof of self insurance by governmental entities will also be accepted.

(2) Insurance under this section shall be kept and remain in force during the lifetime of the certification issued hereunder. An insurance certificate or certificates showing that the required insurance coverage is in force must be filed with the agency.

(3) Such insurance coverage will not be canceled or terminated unless written notice of such cancellation or termination is given to the agency thirty (30) days prior to cancellation date.

(4) Nothing in this section shall be deemed or construed to require product liability insurance coverage.

(5) If in the event insurance is canceled and the agency is not notified within the thirty (30) day period or not provided with proof of insurance renewal, the agency may revoke or suspend the certificate.

380:80-7-10. Guidelines for certificate renewal

(a) Each licensee's certificate(s) issued under the agency shall expire on the last day of the licensee's birth month each year.

(b) A late fee of Ten Dollars ($10.00) will be charged thirty (30) days after the last day of the licensee's birth month. At such time re-testing will be required in order to be certified.

(c) The certification(s) of a licensee renewing his or her certification(s) after September 1, 2015 shall expire on the last day of the licensee's next birth month. The certification fee(s) shall be prorated such that the licensee will pay 1/12 of the annual certification fee(s) for each month from September 2015 up to and including the month of the licensee's birth. The licensee's certification(s) will thereafter expire annually on the last day of the licensee's birth month.

(d) At the time of recertification of a company, partnership, or corporation, proof of insurance coverage will be required as part of the process.

(e) All applications for examination for the renewal of certification shall be made in writing to the agency on forms provided, if necessary, by the agency.

(f) All applications shall be accompanied by the appropriate fee as set forth in section 380:80-7-4.

SUBCHAPTER 9. STANDARDS FOR ALTERNATIVE FUELS TECHNICIANS - CONVERSION AND COMPRESSION

380:80-9-1. Work of alternative fuels technician by non-certified person

(a) From and after September 1, 1991, it shall be unlawful for any person to perform the work or offer, by advertisement or otherwise, to perform the work of an alternative fuels technician until such person is certified as an alternative fuels technician by the agency. All advertisements to perform the work of an alternative fuels conversion company must display the company's license number.

(b) Nothing in this Chapter shall prevent a non-certified person from converting the engine of a farm tractor, as defined in s 1-118 of Title 47 of the Oklahoma Statutes, to an engine fueled by alternative fuels, as long as such farm tractor is not operated on the roads and highways of this state.

(c) Activities directly related to normal, vehicle maintenance and service are exempt from the definition of work. It is not the intent of this section to prevent any individual, corporation, company from servicing, repairing or maintaining general systems not directly related to the alternative fuel delivery system.

(d) Non-certified individuals participating in an agency authorized training program, under the guidance of a state certified instructor, are exempt from the certification requirement during the training period.

380:80-9-2. Standards for equipment installation and inspection

(a) The standards for the equipment installation and inspection of liquefied petroleum gas vehicular fuel systems adopted by NFPA are published in its pamphlet No. 58 and are adopted as the standards for this state.

(b) The standards for the equipment installation and inspection of compressed natural gas and liquid natural gas vehicular fuel systems adopted by NFPA are published in its pamphlet No. 52 and are adopted as the standards for this state.

380:80-9-3. Decals and conversion reporting procedure

(a) After an alternative fuel conversion or modification of equipment is completed for any motor vehicle, the technician shall affix a blue CNG diamond, black propane diamond or green EV diamond, whichever is applicable, according to NFPA pamphlet No. 52.

(b) No certified technician shall install, service, repair or modify any motor vehicle, capable of operating on an alternative fuel that does not have the required decals.

(c) Converted alternative fueled vehicles shall have placed on the vehicle, decals & labels required by NFPA and the following:

(1) The date of installation;

(2) The name of the installing technician; and,

(3) State of Oklahoma Certification number of the alternative fuels equipment technician.

(4) The expiration date of time sensitive parts and components used in the conversion.

(5) Converted vehicle information: year, make, model, and vehicle identification number (VIN).

(d) The following reporting procedure must be performed after each vehicle conversion:

(1) On forms, provided by the Administrator, each vehicle converted shall be reported to the Administrator by the alternative fuels technician. Information deemed necessary by the agency shall be included on the form. These forms must be sent to the Administrator no later than ten (10) days after the completion of the conversion. Photocopying of these forms is permissible.

(2) The penalty for failure to comply with OAC 380:80-9-3(d)(1) shall be determined by the Agency.

SUBCHAPTER 11. VIOLATIONS

380:80-11-1. Alternative Fuels Technician Examiners; complaints, investigations, false or fraudulent representation, suspension or revocation of certificate

(a) The Commissioner of Labor or designee may suspend or revoke any license, certificate or registration for cause upon recommendation of the Committee of Alternative Fuels Technician Examiners and shall comply with the provisions of the Administrative Procedures Act.

(b) The Commissioner of Labor or designee may, upon the motion of the Commissioner or designee, and shall, upon written complaint filed by any person, investigate the business transactions of any certified alternative fuels equipment or compression technician or electric vehicle technician. The results of the investigation may be presented to the Committee and the Committee may recommend suspension or revocation of the license, certificate, or registration.

(c) The Commissioner of Labor or designee shall suspend or revoke any certificate or registration obtained by false or fraudulent representation.

(d) The Commissioner of Labor or designee shall also suspend or revoke any certificate or registration for any of the following reasons:

(1) Making a material misstatement in the application for a certificate or registration, or the renewal of a certificate or registration;

(2) Loaning or illegally using a certificate;

(3) Demonstrating incompetence to act as an alternative fuels equipment or compression technician;

(4) Violating any provisions of the Alternative Fuels Technician Certification Act, or any rule or order prescribed by the agency; or

(5) Willfully failing to perform normal business obligations without justifiable cause.

(e) The General Counsel of the Agency may elect to delegate the investigation to a person or persons of his choice.

(f) Investigations are to be secret until presented to the Committee for recommendations.

(g) Upon the review of the facts of the investigation, the Committee may determine whether or not to hear a case.

(h) The Committee and its activities shall comply with the Administrative Procedures Act.

(i) Any person whose Alternative Fuels Equipment or Compression Technician Certificate has been revoked by the Commissioner of Labor or designee may apply for a new certificate one (1) year from the date of such revocation.

380:80-11-2. Violations; criminal penalties

(a) Any person convicted of violating any provision of the Alternative Fuels Technician Certification Act shall be guilty of a misdemeanor.

(b) The continued violation of any provision of the Alternative Fuels Technician Certification Act during each day shall be deemed to be a separate offense.

(c) Upon conviction thereof the person shall be punished by imprisonment in the county jail not to exceed one (1) year, or by a fine of not more than one thousand dollars ($1,000.00) or by both such fine and imprisonment for each offense.

(d) If the Commissioner of Labor or designee makes a determination of a violation, it may request the appropriate district attorney to prosecute such violation and seek an injunction against such practice.

380:80-11-3. Violations to public safety

(a) Pursuant to the authority of 47 O.S. §12-101 A. 1., 47 O.S. §13-101, it shall be unlawful for any person to operate on any highway:

(1) A vehicle that has not been converted according to, or does not meet the standards stated in section 380:80-9-2;

(2) An OEM alternative fueled vehicle that fails the manufacturer's standards.

(b) An alternative fuels technician shall notify the Administrator within three (3) business days of any instance where the driver and/or owner of a vehicle that was found unsafe refused to correct safety issues with a vehicle.

380:80-11-4. Violations; civil penalties; determination of penalty amount; surrender of certificate in lieu of fine

(a) Any person who has been determined by the Commissioner of Labor or designee to have violated any provision of the Alternative Fuels Technician Certificate Act or any rule or order issued pursuant to the provisions of the Alternative Fuels Technician Certification Act may be liable for a civil penalty of not more than one hundred dollars ($100.00) for each day that said violation occurs.

(b) The maximum civil penalty shall not exceed ten thousand dollars ($10,000) for any related series of violations.

(c) The amount of the penalty shall be assessed by the Commissioner of Labor or designee pursuant to the provisions of OAC 380:80-11-1, after notice and hearing.

(d) In determining the amount of the penalty, the Commissioner of Labor or designee shall include, but not be limited to, consideration of the nature, circumstances, and gravity of the violation and, with respect to the person or persons found to have committed the violation, the degree of culpability and any show of good faith in attempting to achieve compliance with the provisions of the Alternative Fuels Technician Certification Act.

(e) All monies collected from such civil penalties shall be deposited with the State Treasurer of Oklahoma and placed in the Alternative Fuels Technician Certification Revolving Fund.

(f) Any certificate holder may elect to surrender his certificate in lieu of said fine but shall be forever barred from obtaining a reissuance of said certificate.

[OAR Docket #15-734; filed 7-13-15]

Permanent Final Adoptions

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

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

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

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

TITLE 5. OKLAHOMA ABSTRACTORS BOARD
CHAPTER 2. ADMINISTRATIVE OPERATIONS

[OAR Docket #15-446]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Administrative Operations
5:2-3-2 [AMENDED]
AUTHORITY:
Oklahoma Abstractors Board; Title 1, Oklahoma Statutes, Section 22 *et seq.*, "Oklahoma Abstractors Act"
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 17, 2014
COMMENT PERIOD:
January 16, 2015 through February 17, 2015
PUBLIC HEARING:
February 17, 2015
ADOPTION:
March 17, 2015
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 24, 2015
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 8, 2015
FINAL ADOPTION:
June 8, 2015
EFFECTIVE:
August 27, 2015
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The agency moved its offices in August, 2014, and needs to advise the industry and general public on how to contact the agency.
CONTACT PERSON:
Glynda Reppond, Executive Director, Oklahoma Abstractors Board, 421 NW 13th Street, Suite 180, Oklahoma City, OK 73103 (405) 522-5019

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 3. ADMINISTRATIVE OPERATIONS

5:2-3-2. Principal office, hours of operation, and official website

(a) ~~The principal office of the Oklahoma Abstractors Board is 2401 Northwest 23rd Street, Suite 60B, Oklahoma City, Oklahoma, 73107-0076, Post Office Box 700076, Oklahoma City, Oklahoma, 73107-0076.~~The principal office of the Oklahoma Abstractors Board is the address listed on the OAB's website, www.abstract.ok.gov.

(b) The office is open Monday through Friday from 8:00 A.M. until 5:00 P.M. except Saturday, Sunday, and legal holidays.

(c) The official website of the Oklahoma Abstractors Board is www.abstract.ok.gov pursuant to assignment from the Oklahoma Office of State Finance.

[OAR Docket #15-446; filed 6-11-15]

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

[OAR Docket #15-447]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Regulation of Licensees, Certificate Holders and Permit Holders
5:11-5-3 [AMENDED]
AUTHORITY:
Oklahoma Abstractors Board; Title 1, Oklahoma Statutes, Section 22 *et seq.*, "Oklahoma Abstractors Act"
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
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COMMENT PERIOD:
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PUBLIC HEARING:
February 17, 2015
ADOPTION:
March 17, 2015
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 24, 2015
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 8, 2015
FINAL ADOPTION:
June 8, 2015
EFFECTIVE:
August 27, 2015
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A

ANALYSIS:

The proposed revisions to Subchapter 5 are intended to provide all abstract companies in the entire 77 counties the ability to certify to the records of the Clerk of the United States Court instead of only the original four counties which are located in the same counties as the Federal Judicial Districts.

CONTACT PERSON:

Glynda Reppond, Executive Director, Oklahoma Abstractors Board, 421 NW 13th Street, Suite 180, Oklahoma City, OK 73103 (405) 522-5019

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

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

5:11-5-3. Preparation of abstracts

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

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

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

(3) oil, gas and other mineral interests.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) **Digital Abstracts.**

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

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

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

[OAR Docket #15-447; filed 6-11-15]

TITLE 25. OKLAHOMA AERONAUTICS COMMISSION
CHAPTER 35. ANEMOMETER TOWER REGULATIONS

[OAR Docket #15-432]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions [NEW]
25:35-1-1 [NEW]
25:35-1-2 [NEW]
25:35-1-3 [NEW]

Subchapter 3. Marking of Anemometer Towers [NEW]
25:35-3-1 [NEW]
Subchapter 5. Establishment of Database [NEW]
25:35-5-1 [NEW]
Subchapter 7. Administrative Penalties [NEW]
25:35-7-1 [NEW]
Subchapter 9. Effective Dates [NEW]
25:35-9-1 [NEW]

AUTHORITY:
Oklahoma Aeronautics Commission; 3 O.S. Section 121

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 7, 2014

COMMENT PERIOD:
August 15, 2014 through September 15, 2014

PUBLIC HEARING:
September 16, 2014

ADOPTION:
November 13, 2014

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
November 14, 2014

APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's delcaration June 8, 2015

FINAL ADOPTION:
June 8, 2015

EFFECTIVE:
August 27, 2015

SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:
Subchapter 1. General Provisions [NEW]
25:35-1-1 [NEW]
25:35-1-2 [NEW]
25:35-1-3 [NEW]
Subchapter 3. Marking of Anemometer Towers [NEW]
25:35-3-1 [NEW]
Subchapter 5. Establishment of Database [NEW]
25:35-5-1 [NEW]
Subchapter 7. Administrative Penalties [NEW]
25:35-7-1 [NEW]
Subchapter 9. Effective Dates [NEW]
25:35-9-1 [NEW]

Gubernatorial approval:
December 17, 2014

Register Publication:
32 OK Reg 431

Docket number:
14-1157

INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
The permanent rule will ensure that anemometer towers are marked for clear visibility and will establish a data base of anemometer tower locations in order to provide increased aviation safety for users of our air transportation system. The permanent rule sets the requirements and procedures to be followed by the Aeronautics Commission in the administration and enforcement of its duties regarding the regulation of anemometer towers throughout the state.

CONTACT PERSON:
Treasure Morgan, Aviation Education & Government Affairs Liaison, Oklahoma Aeronautics Commission, 120 N. Robinson, Suite 1244W, Oklahoma City, OK 73120, (405) 604-6915

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 1. GENERAL PROVISIONS

25:35-1-1. Purpose

The purpose of this chapter is to set forth administrative rules for the implementation of Title 3, Oklahoma Statutes, Section 121. This chapter establishes the requirements and procedures to be followed by the Commission in the administration and enforcement of its duties under this provision. HB 3348 gives the Commission the authority to promulgate rules to ensure that anemometer towers are marked for clear visibility and to establish a data base of anemometer tower locations throughout the state.

25:35-1-2. Definitions

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

"Anemometer" is an instrument for measuring and recording wind speed;

"Anemometer tower" is a structure, including all guy wires and accessory facilities, on which an anemometer is mounted, that is fifty (50) feet in height above the ground or higher, is not located within the boundaries of a municipality, and whose appearance is not otherwise regulated by state or federal law; and

"Commission" means the Oklahoma Aeronautics Commission as created in Title 3, Oklahoma Statutes, Section 84 of the Oklahoma Statues.

25:35-1-3. Additional zoning requirements

In addition to any zoning requirements of the Airport Zoning Act or the Aircraft Pilot and Passenger Protection Act, the Commission shall promulgate rules regulating the appearance of anemometer towers to ensure that anemometer towers are clearly recognizable in clear air during daylight hours.

SUBCHAPTER 3. MARKING OF ANEMOMETER TOWERS

25:35-3-1. Marking of anemometer towers

Marking as required by this chapter shall include marking the anemometer tower, guy wires, and accessory facilities as follows:

(1) The entire anemometer tower shall be painted in seven equal, alternating bands of aviation orange and white, beginning with orange at the top of the tower and with orange at the bottom of the tower.

(2) Two marker balls shall be attached to and evenly spaced on each of the outside guy wires.

(3) One seven-foot safety sleeve shall be placed at each anchor point and shall extend from the anchor point along each guy wire attached to the anchor point with a second sleeve attached to the outer guy wire.

SUBCHAPTER 5. ESTABLISHMENT OF DATABASE

25:35-5-1. Database requirements

(a) The Commission shall establish and maintain a database containing the location of all anemometer towers by November 1, 2015. The Commission may contract with a governmental entity or private entity to create and maintain the database.

(b) An owner of any existing anemometer tower erected in the state shall provide the Commission with information that specifies the owner, location and height of the tower and any other information that the Commission finds necessary for aviation safety.

(c) At least ten (10) days before the erection of an anemometer tower, an owner of the tower shall provide the Commission with information that specifies the owner, location and height of the tower and any other information that the Commission finds necessary for aviation safety.

(d) An owner of an anemometer tower shall notify the Commission within thirty (30) days after the removal of the tower.

SUBCHAPTER 7. ADMINISTRATIVE PENALTIES

25:35-7-1. Administrative penalties

(a) Failure to comply with the requirements of this chapter shall result in a fine of One Hundred Dollars ($100.00) per day.

(b) Subsequent violations shall result in a fine of at least Five Hundred Dollars ($500.00) and not more than Two Thousand Dollars ($2,000.00) per day.

SUBCHAPTER 9. EFFECTIVE DATES

25:35-9-1. Effective dates

Anemometer towers erected prior to December 17, 2014 shall be exempt from Subchapter 3 until November 13, 2015.

[OAR Docket #15-432; filed 6-10-15]

TITLE 165. CORPORATION COMMISSION CHAPTER 5. RULES OF PRACTICE

[OAR Docket #15-538]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Chapter 5. Rules of Practice [AMENDED]
AUTHORITY:
Oklahoma Corporation Commission; 17 O.S. § 6.1, 17 O.S. § 52, 17 O.S. § 131 *et seq*., 17 O.S. § 166.1, 27A O.S. § 1-3-101, 52 O.S. § 87.6 *et seq*., 52 O.S. § 97, 52 O.S. § 139, 63 O.S. § 142.1 *et seq*., Article IX, Sections 18 and 19 of the Oklahoma Constitution, and OAC 165:5-1-7
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
Although the Oklahoma Corporation Commission is not subject to the requirements of Executive Order No. 2013-34, the proposed rules were submitted to the Governor and Cabinet Secretary on January 22, 2015
COMMENT PERIOD:
January 22, 2015, through February 27, 2015
PUBLIC HEARING:
March 10, 2015
ADOPTION:
March 10, 2015
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 17, 2015
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 8, 2015
FINAL ADOPTION:
June 8, 2015
EFFECTIVE:
August 27, 2015
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The amendments to OAC 165:5-7-6.2 regarding multiunit horizontal wells were made to conform to amendments to the 2011 Shale Reservoir Development Act in Senate Bill No. 78 (2014)(52 O.S. §§ 87.6 through 87.9). OAC 165:5-27-1, OAC 165:5-27-2, OAC 165:5-27-3, OAC 165:5-27-4, OAC 165:5-27-10, OAC 165:5-27-11, OAC 165:5-27-12, OAC 165:5-27-13 and OAC 165:5-27-14 are new rules pertaining to procedures for Pipeline Safety Department enforcement actions pursuant to 63 O.S. § 142.1 *et seq*. and amendments thereto in Enrolled House Bill No. 2533 (2014). OAC 165:5-1-11, OAC 165:5-1-12, OAC 165:5-1-12.1, OAC 165:5-1-13, OAC 165:5-1-13.1, OAC 165:5-1-14, OAC 165:5-1-14.1 and OAC 165:5-1-14.2 are new rules pertaining to electronic filing of documents. Other rules were amended in an effort to update, standardize and streamline language and procedures appearing in OAC 165:5, as well as to address changes in technology.
CONTACT PERSON:
Susan Dennehy Conrad, Deputy General Counsel, Office of General Counsel, Oklahoma Corporation Commission, 2101 North Lincoln Boulevard, PO Box 52000, Oklahoma City, OK 73152-2000, telephone: (405) 521-3939, s.conrad@occemail.com.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 1. GENERAL PROVISIONS

PART 1. GENERAL

165:5-1-3. Definitions

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

"Administrative Law Judge" means an Oil and Gas Appellate Referee, Referee, Administrative Law Judge, Hearing Officer, an officer, attorney, or any other employee of the Commission to whom the Commissioners delegate by order or otherwise, the authority to conduct a hearing.

"Applicant" means any person commencing a proceeding.

"Application" means any written request by an applicant commencing a proceeding for Commission action or relief.

"Attorney" means a licensed attorney currently admitted to practice before the Supreme Court of Oklahoma, or an attorney currently licensed to practice in another state who is

granted under principles of reciprocity permission to appear in proceedings of the Commission.

"Business day" means a day that is not a Saturday, Sunday, or legal holiday.

"Commission" means the Oklahoma Corporation Commission, the public entity created under the provisions of Article IX, Section 15, Oklahoma Constitution.

"Commissioner" means a member of the Commission.

"Complaint" means the written document that opens a cause and seeks enforcement of an order, rule, or regulation of the Commission or relief against a named respondent based upon an alleged violation of law or of a rule, regulation, or order of the Commission.

"Confirmation of electronic filing" means the electronic confirmation generated by the Electronic Filing System.

"Document" means any written matter filed in a cause. A "document" includes any attached appendices.

"Electronic" means technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

"Electronic Filing System" means the Commission's online filing system used to file documents with the Court Clerk in Commission proceedings.

"Electronic mail address" is the primary electronic mail address provided by the registered user. An electronic mail address must have the functionality required by the Electronic Filing System.

"Electronic signature" means a symbol or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document.

"Filer" means a registered user whose user identification and password are used to file documents electronically.

"Intervenor" means any party of record who is not an applicant or named respondent.

"Legal holiday" means only those days declared legal holidays by law or proclamation of the Governor of Oklahoma, or those days on which United States mail is not delivered.

"Official service list" means the list of designated recipients of electronically mailed documents regarding the Commission's Electronic Filing System.

"Oil and Gas Appellate Referee" means a duly licensed attorney in the State of Oklahoma who is familiar with statutes and rules governing oil and gas operations in Oklahoma who shall provide central support to the Commission en banc in the hearing of oil and gas matters before the Commission en banc.

"Order" means that which is required or commanded to be done, or not to be done, and shall be generally reserved for the requirement or directive portion of an official order or decision of a proceeding; or the promulgation of rules, regulations, and requirements in matters in which the Commission acts.

"Party of record" means a person who makes formal appearance either in person or by an attorney at any stage of a cause whether or not seeking affirmative relief.

"Person" means an individual, partnership, corporation, association, trust, and every other type of legal entity, including an officer or employee of the Commission.

"Protestant" means a person who, upon grounds of private or public interest, resists an application or any relief sought thereby. A protest is governed by the rules applicable to a response.

"Record" of any proceeding shall consist of the following:

(A) Preliminary exhibits, including pleadings, motions, notices, and proof of publication;

(B) Transcript of proceedings at all hearings;

(C) Depositions, stipulations, interrogatories and answers, written testimony, offers of proof, and similar matters;

(D) Exhibits, together with attachments, appendices, and amendments thereto;

(E) Initial Report of the Administrative Law Judge and Report of the Oil and Gas Appellate Referee, if any;

(F) Exceptions and motions subsequent to the hearing;

(G) Orders or rules of the Commission; and

(H) Any other document or matter relevant to the issues ordered to be included by the Commission.

"Referee" means a duly licensed attorney in the State of Oklahoma who is familiar with statutes and rules governing Commission regulated entities in Oklahoma who shall provide central support to the Commission en banc in the hearing of matters before the Commission en banc.

"Register" or "registration" means the process for a person to request authority from the Commission to use the Electronic Filing System.

"Registered user" means a person who has applied for and been approved to use the Electronic Filing System.

"Regular mail" means first class United States Mail, postage prepaid, and includes hand delivery. Wherever in OAC 165:5 a person is directed to mail by regular mail, such directive shall not preclude mailing by restricted mail.

"Respondent" means a named person against whom relief is sought in a proceeding, or a person who is entitled to receive a notice of hearing as set forth in 165:5-7-1~~(m)~~(f), or who appears in opposition to relief sought by the applicant, and includes the term "defendant".

"Respondent list" means a list of named persons against whom relief is sought in a proceeding, or persons who are entitled to receive a notice of hearing as set forth in 165:5-7-1(f), or who appears in opposition to relief sought by the applicant, and includes the term "defendant". The "Respondent list" is distinguished from the Official service list as defined herein.

"Restricted mail" means mailing by certified mail, return receipt requested, within the United States and its territories and mailing by registered mail outside the United States and its territories. For purposes of service outside the United States, "registered mail" includes any means provided by Federal Rule of Civil Procedure 4(f).

"Secretary" means the duly appointed and qualified Secretary, Assistant Secretary or Acting Secretary of the Commission, or any person appointed by the Commission to act as such Secretary during the absence, inability, or disqualification of the Secretary to act.

"Staff counsel" means the General Counsel or other attorney on the staff of the General Counsel's Office when acting as counsel for the Commission.

"Technical failure" means a malfunction of Electronic Filing System hardware, software, and/or telecommunications facility which results in the inability of a registered user to file a document. It does not include the failure of a registered user's equipment, software, and/or telecommunications facility.

"Website" means the Commission website.

165:5-1-5. Filing of documents

(a) **Document form.** Electronic filing is the Commission's preferred filing method. All persons filing documents with the Court Clerk are encouraged to file electronically to the greatest extent possible. Documents filed with the Court Clerk in paper format may be printed, typewritten or reproduced by any legible method. ~~Documents shall be~~All documents filed in paper format must be single-sided on 8 1/2" x 11" paper and ready for digital processing by the Court Clerk. Exceptions to the required document size may be allowed by the Court Clerk for good cause shown. Exact duplicates of ~~oversized exhibits or other~~any allowed documents must be filed in sections on 8 1/2" X 11" paper to allow for ~~optical imaging of the exhibit~~digital processing by the Court Clerk. ~~Exceptions to the required document size may be allowed by the Court Clerk for exhibits or other filed information that cannot be created on the required size paper. All legal notices and affidavits of publication of legal notices shall be filed with the Court Clerk by the applicant or the attorney for the applicant in a cause. All legal notices and affidavits of publication of legal notices must be filed with the Court Clerk in a format that is prepared for optical imaging or digital processing; provided, however, if any affidavit of publication of a legal notice obtained by the applicant or the attorney for the applicant from the newspaper publishing such legal notice is not in a format for optical imaging or digital processing, the applicant or the attorney for the applicant may modify a copy of such affidavit of publication so that the affidavit is in a format for optical imaging or digital processing.~~ Quotations shall be indented. Subsequent to the filing of the original application, every page of documents filed with the Court Clerk shall contain a page number, the applicable subject matter docket listed in OAC 165:5-5-1(a), the docket number assigned to the cause by the Court Clerk, and document type, e.g., application, motion, response, or brief. All filed documents must have a continuous pagination for the entire document, including exhibits and attachments. The original application shall include all this information, except the docket number, on each page.

(b) **Filing refused.** The Court Clerk is authorized to refuse to accept for filing any document containing defamatory, scurrilous or improper language, or otherwise in violation of any of the rules of this Chapter. In case of such refusal, upon request, the document shall be presented to the Commission for ruling on acceptability for filing.

(c) ~~**Signed original; copies**~~**Required information.** ~~A signed original of every document requiring an attorney's signature shall be filed for use of the Commission, with additional copies as may be required by the Court Clerk.~~ The requirements of this subsection shall not be jurisdictional. All documents shall include the party's or attorney's actual or electronic signature, typed name, business mailing address, telephone number, facsimile number and electronic mail address, if any. A registered user must provide an electronic mail address at the time the registered user files his or her entry of appearance or other initial filing. All documents, except notices of hearing, signed by an attorney shall contain the name of the State Bar Association to which the attorney belongs and his/her State Bar Association number.

(d) **Requirement conflicts.** Wherever any provision of the Constitution or laws of Oklahoma makes a requirement as to notice or procedure which exceeds or conflicts with any provision of the rules of this Chapter, the former shall govern.

(e) **Informal communications.** Nothing in the rules of this Chapter shall prohibit informal inquiry or complaint to the Commission by mail or in person, which matters shall be handled administratively by the staff in an effort to secure amicable adjustment or agreement among affected persons. No official order shall be issued as a result of any informal proceedings.

(f) **Facsimile transfers.** The Court Clerk shall accept pleadings submitted by facsimile transfer during regular Commission business hours pending payment of appropriate filing fee and submission of a proper original and requisite copies within five (5) calendar days of the filed facsimile, in accordance with the provisions of 165:5-1-6(a). New applications must be transferred and completed prior to 4:00 p.m. of each business day. A facsimile shall be deemed filed on date of receipt, unless the proper original is not timely received and/or the appropriate filing fee is not paid. When the original documents are not received within five (5) calendar days of receipt of the facsimile and/or the appropriate filing fee is not timely paid, the facsimile will be destroyed and the original documents will not be deemed timely filed.

PART 2. ELECTRONIC FILING OF DOCUMENTS

165:5-1-11. Scope

(a) All documents submitted electronically to the Court Clerk for filing in a proceeding shall conform to the rules and procedures for electronic filing. Any filing not conforming to the rules and procedures for electronic filing may be rejected by the Court Clerk.

(b) Users of the Electronic Filing System shall comply with all applicable instructions, registration requirements, and the user agreement for electronic filing appearing on the Commission's website.

165:5-1-12. Time of filing

Documents can be electronically filed with the Court Clerk 24 hours a day, seven days a week. Filing a document electronically does not, however, alter the filing deadline for that document. If the Commission or Administrative Law Judge has ordered a document to be filed with the Court Clerk by a time certain, it must be filed by that time. Otherwise, a filing must be completed before midnight Central time on the date it is due to be considered timely filed. The official

filing time is the filing time indicated on the confirmation of electronic filing.

165:5-1-12.1. Acceptance of filing

(a) A document shall not be considered to be electronically filed until submitted to the Court Clerk via the Electronic Filing System and a confirmation of electronic filing is generated by the Electronic Filing System.

(b) Risk of loss of transmission, of non-receipt, or of illegibility is borne by the person transmitting and filing documents electronically.

165:5-1-13. Technical failures

(a) The criteria for declaring a technical failure of the Electronic Filing System shall be posted on the Commission's website.

(b) A filer whose filing is made untimely as the result of a technical failure of the Electronic Filing System may seek appropriate relief from the Commission. Failures not originating with the Electronic Filing System, such as phone line problems, problems with the filer's Internet service provider, or hardware or software problems, will not constitute a technical failure or excuse an untimely filing. The Commission may grant appropriate relief regarding an untimely filed document.

165:5-1-13.1. Correction of electronic filings

A filer cannot make changes to a document after the document has been electronically filed. If a filing error is made, the filer shall contact the Court Clerk as soon as possible with the correct document or filing information, as appropriate.

165:5-1-14. Signatures on electronically filed documents

(a) Electronic signatures are required on all documents filed electronically. By use of an electronic signature, the person represents that all requirements of the applicable authority requiring the person's signature have been satisfied and all duties and obligations imposed by law have been fulfilled.

(b) An electronic signature placed on a document is deemed to constitute a signature on the document for purposes of all signature requirements imposed and or/any other applicable law. An electronic signature placed on a document shall have the same force and effect as a handwritten signature.

165:5-1-14.1. Official service list

(a) Each document filed electronically in any proceeding shall clearly state the name, title, address, telephone number, facsimile transmission number (if any), and electronic mail address (if any) of the individual(s) to whom pleadings, notices, and correspondence are to be addressed and who are to be shown on the official service list. The electronic mail address, if any, shall be the address for the official service list. The official service list is not the respondent list and the filer is responsible for designating and updating the electronic mail addresses for the official service list.

(b) Unless otherwise ordered by the Commission, each filer shall be allowed to designate individuals to be included on the official service list for an application.

(c) A filer may change the individual(s) to be shown on the official service list by filing a notice of addition, deletion, or substitution. Each party of record is responsible for ensuring its contact information is current and accurate.

165:5-1-14.2. Documents subject to protective order

Unredacted documents which contain materials subject to a protective order shall not be filed electronically, but rather submitted in person or by mail to the Court Clerk until such time as the user agreement maintained on the Commission's website expressly allows the electronic filing of documents subject to a protective order.

SUBCHAPTER 3. FEES

PART 1. GENERAL PROVISIONS

165:5-3-1. Fees

(a) **General.**

(1) **Exceptions to filing fees.** For each initial application in each category listed in (b) of this Section, a filing fee shall be paid by the person seeking to file or submit the document, unless the document is filed under authorization of and in the name of an instrumentality of the State of Oklahoma.

(A) Filing fees shall not apply to any subsequent pleading or amended application except a Form 1000 required in OAC 165:10-3-1(b)(1)(A) through (E) and OAC 165:10-3-1(c).

(B) No filing fee shall be required for any application filed pursuant to OAC 165:5-3-31, Use of vacuum.

(C) No filing fee applicable to the conservation docket shall be required for any Notice of Intent to Mediate filed with the Office of Administrative Proceedings pursuant to OAC 165:5-23-1 et seq. A per participant fee provided in OAC 165:5-3-1(b)(1)(H) shall be charged for any informal dispute resolution procedure that commences.

(D) No filing fee shall be paid by a party filing a protest to an adverse action of the Commission pursuant to the International Fuel Tax Agreement ("IFTA") or the International Registration Plan ("IRP").

(E) No filing fee shall be paid by a customer filing a Consumer Services docket application against a public utility.

(2) **Filing fees.** Any filing fee assessed by this Section shall be due and paid at the time of filing of the document. Neither the Court Clerk's Office nor any division of the Commission shall accept an application subject to a filing

fee until the required fee is paid. No filing fee shall be refundable. ~~All~~For documents that are being filed in paper form, all associated filing fees must be paid and the documents ~~requiring a filing fee~~ submitted to the Court Clerk's Office for filing prior to 4:00 p.m. to allow for document processing within established hours of operation.

(3) **Other fees.** Any other fee assessed by this Section shall be due and payable at the time the service is requested. No service shall be rendered before payment of the prescribed fee. No such other fee shall be refundable.

(4) **Negotiable instruments.** Fees paid by negotiable instruments shall be made payable to the "Oklahoma Corporation Commission." Negotiable instruments include personal checks, cashier checks, certified checks, and money orders. Foreign checks must be payable through a United States bank in United States funds.

(5) All fees pertaining to the Petroleum Storage Tank Division are listed in OAC 165:5-3-2.

(b) **Schedule of filing fees.**

(1) **Oil and gas fees.**

(A) Commercial disposal well application - $1,000.00

(B) Commercial earthen pit application - $1,000.00

(C) Commercial soil farming site application - $1,000.00

(D) Commercial recycling facility application - $1,000.00

(E) Conservation docket and pollution docket base applications - $100.00

(F) Permit to drill - $175.00

(G) Emergency walk-thru permit to drill - $500.00

(H) Notice of Intent to Mediate pursuant to Chapter 23 of this Chapter - $5.00 per participant

(I) Permit for one-time land application of water based fluids - $100.00

(J) Emergency walk-through of permit for one-time land application water based fluids - $200.00

(K) Application for non-commercial injection or disposal well - $100.00

(L) Emergency application on the conservation or pollution docket - $100.00

(M) Tax exemption application filed pursuant to OAC 165:10-21 - $100.00

(2) **Transportation fees.**

(A) Transportation docket application - $100.00

(B) Other transportation fees:

(i) Intrastate license and certificate fees.

(I) Original application filing fee - $100.00

(II) Sub application filing fee - $100.00

(III) Renewal application filing fee - $50.00

(IV) Reinstatement application filing fee - $100.00

(V) Name change application filing fee - $50.00

(VI) Identification device or per vehicle fee - $7.00

(ii) Deleterious Substance License Permit application filing fee - $350.00

(iii) International Fuel Tax Agreement (IFTA) fees.

(I) IFTA decal - $2.00 per vehicle per decal set

(II) IFTA reinstatement fee - $100.00

(iv) Trailer registration processing fee per trailer registered through the IRP System - $2.00

(v) Temporary registration and fuel permit fees.

(I) Temporary registration (72 hour trip permit) - $12.00

(II) Temporary fuel permit (120 hours) - $25.00

(III) Unladen or hunters permit (45 days) - $25.00

(vi) Harvest permit fees (power units only).

(I) Thirty day permit - $20.00 per axle

(II) Sixty day permit - $35.00 per axle

(III) 15 day extension - $8.75 per axle

(3) **Utility fee.** Public utility docket application - $100.00

(4) **Enforcement fee.** Enforcement docket application - $100.00

(c) **Certified copies.** A fee of $1.00 per copied page is charged for each copy of an order or other document on file with the Commission certified by the Secretary, in addition to the fees specified in (d) of this Section.

(d) **Other fees.** The following fees shall be charged and collected at the time of request for same; none of which shall ever be refundable:

(1) Certificate of non-development (maximum of one quarter section) - $10.00

(2) Copies of any file or order -

(A) Non-certified copies - $0.25 per page; certified copies $1.00 per page

(B) Postage - actual cost

(3) Microfilmed images from coin-operated microfilm reader (coin box) - $0.25

(4) Batch reproduction on continuing basis (per page) - $0.25

(5) Copy of any document prepared in OCC offices (per page) - $0.25

(6) Copy of any Chapter of Commission rules and regulations - $10.00

(7) Copy of Oil and Gas Conservation rules - $20.00

(8) Current ownership/lienholder information - $1.00 per vehicle record page

(9) Computer generated title history - $5.00 per vehicle

(10) Manual title history - $7.50 per vehicle

(11) Copy of lien release - $7.50 per vehicle

(12) Certified copy of lien release - $10.00 per vehicle

(13) Certified copy of title history - $10.00 per vehicle

(e) **Computer data processing documents.** Reproduction of documents or informational searches involving computer data processing services will be in accordance with the rates

established by the Oklahoma Office of Management and Enterprise Services.

(f) **Document search fee.** Except where provided otherwise by law, where the request for document copying and/or mechanical reproduction is solely for commercial purpose or clearly would cause excessive disruption of the Commission's essential functions, then a fee of $10.00 per hour (minimum of one hour) shall be charged to recover the direct cost of document search.

(g) **Fax.** A service charge of $5.00 plus $1.00 per page will be assessed for all outgoing faxes. All incoming faxes for persons not associated with the Commission shall be assessed a copy fee of $0.25 per page including the cover page.

(h) **Payments by Credit Card and other means of electronic funds transfer.**

(1) "Nationally recognized" credit card means any instrument or device, whether known as a credit card, credit plate, charge plate, debit card, or by any other name, issued with or without fee by an issuer for the use of the cardholder in lieu of a check, as defined by 12A Oklahoma Statute § 3-104(f), in obtaining goods, services or anything else of value or for the use of the cardholder in obtaining such goods, services, or anything else of value on credit and which, in either case, is accepted by over one thousand merchants in this state. The Oklahoma Corporation Commission shall determine which nationally recognized credit card will be accepted for any payments due and owing to the Oklahoma Corporation Commission.

(2) Implementation of payment by nationally recognized credit card and other means of electronic funds transfer will be phased in over a period of time as determined by the Commission.

(3) The Oklahoma Corporation Commission will verify that sufficient credit is available before acceptance of credit card to insure that no loss of state revenue will occur by the use of such card.

(A) If a person is at a designated receiving point and credit is not available, the person then has the opportunity to pay by other methods accepted by the Commission.

(B) If a person mails in the credit card information and credit is not available, the transaction will be handled as one with no remittance and a bill will be forthcoming.

(4) The Oklahoma Corporation Commission may add an amount equal to the amount of the service charge incurred, not to exceed four percent (4%) of the amount of such payment as a service charge for the acceptance of such nationally recognized card.

(5) Persons wishing to pay by credit card must be willing to submit normally required credit card information to the Commission. This includes, but is not limited to: card type (VISA, etc.), card number, card expiration date, card holder name as shown, and three digit security personal identification number (PIN). The Commission assumes no liability for unauthorized use of this information.

(6) "Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct or authorize a financial institution to debit or credit an account.

(7) "Electronic terminal" means an electronic device, other than a telephone operated by a person, through which a person may initiate an electronic funds transfer.

(8) "Financial institution" means a State or National bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person who, directly or indirectly, holds an account belonging to another person.

(9) "State" means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing.

165:5-3-2. Fees for the Petroleum Storage Tank Division

(a) **General.**

(1) For each initial application filed on the Petroleum Storage Tank docket, a filing fee shall be paid by the person seeking to file or submit the document, unless the document is filed under authorization of and in the name of an instrumentality of the State of Oklahoma. Filing fees shall not apply to any emergency application, subsequent pleading or amended application.

(2) Any fee assessed by this Section is either due and payable at the time of filing or due and payable at the time the service is requested. Neither service shall be rendered before payment of the prescribed fee nor shall the Court Clerk's Office or any division of the Commission accept any application subject to a filing fee until the required fee is paid. All fees are nonrefundable.

(3) The fees listed in this section may be paid by check, personal checks, cashier checks, certified checks, ~~and~~ money orders, credit cards and other means of electronic funds transfer. Foreign checks must be payable through a United States bank in United States funds. The check or money order should be made payable to the "Oklahoma Corporation Commission - Petroleum Storage Tank Division" and will be deposited to the Oklahoma Petroleum Storage Tank Revolving Fund.

(4) Payments by credit card and other means of electronic funds transfers.

(A) "Nationally recognized" credit card means any instrument or device, whether known as a credit card, credit plate, charge plate, debit card, or by any other name, issued with or without fee by an issuer for the use of the cardholder in lieu of a check, as defined by 12A Oklahoma Statute § 3-104(f), in obtaining goods, services or anything else of value or for the use of the cardholder in obtaining such goods, services, or anything else of value on credit and which, in either case, is accepted by over one thousand merchants in this state. The Oklahoma Corporation Commission shall determine which nationally recognized

credit card will be accepted for any payments due and owing to the Oklahoma Corporation Commission.

(B) Implementation of payment by nationally recognized credit card and other means of electronic funds transfer will be phased in over a period of time as determined by the Commission.

(C) The Oklahoma Corporation Commission will verify that sufficient credit is available before acceptance of credit card to insure that no loss of state revenue will occur by the use of such card.

(i) If a person is at a designated receiving point and credit is not available, the person then has the opportunity to pay by other methods accepted by the Commission.

(ii) If a person mails in the credit card information and credit is not available, the transaction will be handled as one with no remittance and a bill will be forthcoming.

(D) The Oklahoma Corporation Commission may add an amount equal to the amount of the service charge incurred, not to exceed four percent (4%) of the amount of such payment as a service charge for the acceptance of such nationally recognized card.

(E) Persons wishing to pay by credit card must be willing to submit normally required credit card information to the Commission. This includes, but is not limited to: card type (VISA, etc.), card number, card expiration date, card holder name as shown, and three digit security personal identification number (PIN). The Commission assumes no liability for unauthorized use of this information.

(F) "Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct or authorize a financial institution to debit or credit an account.

(G) "Electronic terminal" means an electronic device, other than a telephone operated by a person, through which a person may initiate an electronic funds transfer.

(H) "Financial institution" means a State or National bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person who, directly or indirectly, holds an account belonging to another person.

(I) "State" means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing.

(b) **Fees.**

(1) **Application fee.** The amount of fee to file an application on the Petroleum Storage Tank/Indemnity Fund docket is $100.00.

(2) **Annual fee.** An annual storage tank permit fee shall be charged to all owners of regulated petroleum storage tanks for each storage tank currently in use as follows:

(A) For petroleum storage tanks - $25.00 per tank.

~~(B) A facility which has both petroleum and hazardous substance will be considered as one facility.~~

(~~C~~B) For noncommercial agricultural underground storage tanks containing petroleum products - $10.00 per tank.

(~~D~~C) For any facility installed or permanently abandoned during a calendar year, the full yearly fee shall be assessed.

(~~E~~D) Billings will be mailed out approximately 60 days in advance of the due date as noted on the billing.

(3) **UST Installer licensing fee.** Any individual who is to be licensed as an underground storage tank installer shall pay the following fees:

(A) Application fee - $25.00
(B) Examination fee/re-exam fee - $25.00
(C) License fee (2-Year license) - $50.00
(D) License renewal fee (2-year license) - $50.00
(E) If licensed for six months or less - $25.00

(4) **Remediation Consultant License.** Any individual who qualifies as a Remediation Consultant shall pay the following fees:

(A) Application fee - $25.00
(B) Examination/re-exam fee - $25.00
(C) License fee (2-year license) - $50.00
(D) License renewal fee (2-year license) $50.00
(E) If licensed for six months or less - $25.00

(5) **UST Remover licensing fee.** Any individual who is to be licensed as an underground storage tank remover shall pay the following fees:

(A) Application fee - $25.00
(B) Examination fee/re-exam fee - $25.00
(C) License fee (2-Year license) - $50.00
(D) License renewal fee (2-year license) - $50.00
(E) If licensed for six months or less - $25.00

(6) **AST Installer licensing fee.** Any individual who is to be licensed as an aboveground storage tank installer shall pay the following fees:

(A) Application fee - $25.00
(B) Examination fee/re-exam fee - $25.00
(C) License fee (2-Year license) - $50.00
(D) License renewal fee (2-year license) - $50.00
(E) If licensed for six months or less - $25.00

(7) **Vapor Monitoring Well Technician licensing fee.** Any individual who is to be licensed as a monitoring technician shall pay the following fees:

(A) Application fee - $25.00
(B) Examination fee/re-exam fee - $25.00
(C) License fee (2-Year license) - $50.00
(D) License renewal fee (2-year license) - $50.00
(E) If licensed for six months or less - $25.00

(8) **Miscellaneous fees.**

(A) **Certified copies.** A fee of $1.00 per copied page is charged for each copy of an order or other document on file with the Commission certified by

the Secretary, in addition to the fees specified in this Section.

(B) **Other fees.** The following fees shall be charged and collected at the time of request for same; none of which shall be refundable:

(i) Batch reproduction on continuing basis (per page) - $0.25

(ii) Copy of any document prepared in OCC offices (per page) - $0.25

(iii) Copies of any file or order -

(I) Non-certified copies - $0.25 per page; certified copies $1.00 per page

(II) Postage - actual cost

(C) **Computer data processing documents.** Reproduction of documents or informational searches involving computer data processing services will be in accordance with the rates established by the Oklahoma Office of Management and Enterprise Services.

(D) **Document search fee.** Except where provided otherwise by law, where the request for document copying and/or mechanical reproduction is solely for commercial purpose or clearly would cause excessive disruption of the Commission's essential functions, then a fee of $10.00 per hour (minimum of one hour) shall be charged to recover the direct cost of document search.

(E) **Fax.** A service charge of $5.00 plus $1.00 per page will be assessed for all outgoing faxes. All incoming faxes for persons not associated with the Commission shall be assessed a copy fee of $0.25 per page including the cover page when not submitted for filing with the Court Clerk's Office.

(9) **Failure to pay fee.** Failure to pay by the designated due date, insufficient payments or returned payment of any fee within this subsection will result in the Corporation Commission being authorized to assess payment of any outstanding fee, plus

(A) Assess payment of a penalty of 50% of the computed total fee of that application or facility; and/or

(B) Suspend tank operation until payment of any fee or penalty assessed under this subsection.

PART 4. ASSESSMENTS ON UNREGULATED ENTITIES

165:5-3-30. Purpose

The purpose of this Part is to assess, pursuant to ~~17 O.S. (Supp. 1993) § 180.11~~Section 45 of Senate Bill 575 (1993), a fee in public utility docket causes filed by ~~unregulated~~Unregulated entities, to assist in providing funding to the Public Utility Regulation Revolving Fund.

165:5-3-31. Definitions

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

"Unregulated entity" means any person, firm or corporation which is not a public utility as defined in Title 17 O.S. ~~(Supp. 1993)~~ §180.11.

165:5-3-32. Commission determination of assessment

(a) In causes ~~initiated~~ on the Public Utility Docket ~~by an unregulated entity seeking affirmative relief~~where the cause was filed by an Unregulated entity, fees may be assessed to the ~~applicant unregulated~~Unregulated entity upon a motion of the Staff of the Public Utility Division made within ninety (90) days after the ~~application has been filed, after notice and hearing; provided, however, should the applicant make~~cause is filed. Notice of the hearing on the motion shall be given to all parties of record in the cause pursuant to Commission rules; provided, however, the final amount of assessment on the Unregulated entity shall be made within sixty (60) days following the issuance of the final order in the cause, or if a final order is not issued then upon conclusion of the cause whether it be by dismissal or otherwise. If an Unregulated entity makes a material change in its application or ~~add~~adds a separate cause after 90 days, the Commission may make an additional assessment.

(b) In considering whether or not to assess fees to the ~~applicant unregulated~~Unregulated entity, the Commission shall consider, although not be limited to, the following factors:

(1) The benefit(s) to the ~~applicant~~Unregulated entity if the ~~requested~~ relief requested by the Unregulated entity is granted.

(2) The benefit(s) to the State of Oklahoma if the ~~requested~~ relief requested by the Unregulated entity is granted.

(3) The public interest.

(4) Compliance with any other state or federal law under which this Commission has jurisdiction.

(5) Whether the ~~applicant~~Unregulated entity is a consumer group filing a case on behalf of themselves as consumer/members and the composition of the consumer group.

(c) The Commission shall make a determination of the estimated costs which will be incurred by the Commission for Commission resources and/or consulting services~~,~~ that are required to process an application.

(d) In the event the actual costs of the Commission are less than the assessed amount, the difference will be refunded to the ~~unregulated~~Unregulated entity ~~applicant~~.

(e) The Commission shall issue an order which shall include the following:

(1) Whether or not the ~~unregulated~~Unregulated entity will be assessed a fee.

(2) The amount of the fee to be assessed, which shall be no greater than the estimated amount, and which shall not be subject to modification, regardless of the cause being delayed or to which exceptions are filed, except as provided in 165:5-3-32(a).

(3) The date the payment shall be paid.

(f) All ~~unregulated entity applicants~~Unregulated entities who in their capacity as customers of a regulated utility file a complaint with the Commission seeking compliance with

existing Commission rules and regulations and/or Commission approved tariffs shall not be assessed fees beyond the filing fee set forth in 165:5-3-1.

165:5-3-33. Option to withdraw application

If the Commission orders that a fee be assessed, the ~~applicant unregulated~~ Unregulated entity shall have the option of proceeding with the cause or withdrawing its application. If the ~~applicant unregulated~~Unregulated entity withdraws its application, no assessment beyond the filing fees set forth in 165:5-3-1 shall be required.

165:5-3-34. Payment of assessment

Failure by an ~~applicant unregulated~~Unregulated entity to pay an assessed fee by or on the date ordered by the Commission shall either result in ~~a dismissal~~denial of the relief requested by the Unregulated entity without prejudice, after notice and hearing, or postponement of the procedural schedule as directed by the Commission.

SUBCHAPTER 7. COMMENCEMENT OF A CAUSE

PART 3. OIL AND GAS

165:5-7-6. Drilling and spacing unit establishment or modification

(a) Notice of hearing relating to drilling and spacing units shall be published one time at least fifteen (15) days prior to the hearing in a newspaper of general circulation published in Oklahoma County, Oklahoma, and in a newspaper of general circulation published in each county in which lands embraced in the application are located.

(b) When an applicant proposes to establish, vacate, alter, modify, amend, or extend a drilling and spacing unit, the application and notice shall be served by the applicant no less than fifteen (15) days prior to the date of the hearing, by regular mail, upon each person or governmental entity having the right to participate in production from the proposed drilling and spacing unit or the existing drilling and spacing unit.

(c) A plat or plats shall be attached to each application for an order to establish a drilling and spacing unit or units or to extend existing spacing within a common source or sources of supply, which plat shall show the spacing units requested together with any spacing units abutting or overlapping the area to be spaced, and any abutting spacing units in all spaced formations. An amended plat shall be provided at the time of the hearing in the event drilling and spacing units have been established after the application was filed and prior to the hearing to reflect the status of the spacing at the time of the hearing.

(d) An application to extend spacing from an adjacent drilling and spacing unit shall state in the body of the application the order number that created the spacing in the adjacent unit that applies to the common sources of supply which are sought to be extended by the application. Such request to extend spacing and citation to such order number shall be placed in the special relief paragraph of the notice of hearing.

(e) Where a well has not been commenced to or completed in the common source of supply sought to be spaced, notice of hearing for an order to vacate, alter, amend, extend, or change a prior spacing order shall be served and published as required in (a) of this Section. Such request to vacate, alter, amend, extend, or change a prior spacing order shall be placed in the special relief paragraph of the notice of hearing.

(f) Where two or more orders have issued spacing a common source of supply and such spacing orders have resulted in there being a conflict either as to the size of the unit or as to a common source of supply or a conflict as to the nomenclature of the common source of supply, then the applicant seeking to vacate, alter, amend, or change one of the prior spacing orders shall either file an application to construe and modify the conflicting orders or may amend a relevant application to accomplish the same result. Notice of hearing shall be served and published as required upon the commencement of a proceeding.

(g) The Commission may issue an order establishing horizontal well units for a common source of supply. A horizontal well unit may be established for a common source of supply for which there are already established non-horizontal drilling and spacing units, and said horizontal well unit may include within the boundaries thereof more than one existing non-horizontal drilling and spacing unit for the common source of supply. Upon the formation of a horizontal well unit that includes within the boundaries thereof one or more non-horizontal drilling and spacing units, the Commission shall provide that such horizontal well unit exists concurrently with one or more of such non-horizontal drilling and spacing units, and each such unit may be concurrently developed. Notwithstanding the foregoing, the Commission may vacate any non-horizontal drilling and spacing unit upon a proper showing of a change of conditions or change in knowledge of conditions to justify such vacation or deletion, and any such request to vacate or delete any such non-horizontal drilling and spacing unit may be included in and made a part of any application to form one or more horizontal well units.

(1) In any spacing proceeding to establish or form a horizontal well unit, the application filed in such proceeding shall set forth and describe any non-horizontal drilling and spacing unit that exists concurrently with such horizontal well unit, including the well or wells located in any such non-horizontal drilling and spacing unit.

(2) The order entered in such proceeding shall describe any non-horizontal drilling and spacing unit that exists concurrently with the horizontal well unit, including the well or wells located in such non-horizontal drilling and spacing unit. The order establishing or forming a horizontal well unit that exists concurrently with any non-horizontal drilling and spacing unit shall state, based on the evidence presented, that the consent in writing required by subsection (h) of this Section has been obtained and filed or that a waiver of such consent requirement

as authorized by subsection (i) of this Section has been granted by the Commission.

(h) No order of the Commission authorizing a horizontal well unit that overlies any existing well, or portion of any existing drilling and spacing unit with any existing well, producing from the same common source of supply ~~will become effective~~shall be entered until:

(1) at least fifty percent (50%) of the ownership having a right to drill in each such well and drilling and spacing unit consents in writing to the formation of such horizontal well unit and such written consent or consents are filed with the Court Clerk of the Commission in the applicable spacing proceeding or otherwise entered into the record in such proceeding; or

(2) such consent is waived by the Commission. Provided, however, in the event any such order is entered by the Commission without the written consent required above or a waiver of such consent, any horizontal well unit purported to be formed by such order for which such consent is required shall not be effective until such consent is filed with the Court Clerk of the Commission in such spacing proceeding or is otherwise entered into the record of such proceeding or such consent is waived by the Commission. Requests for such consent must be sent by restricted mail to the owners having the right to drill in any existing well and/or drilling and spacing unit producing from the same common source of supply as the proposed horizontal well unit. In addition, if the boundaries of the horizontal well unit do not encompass such existing drilling and spacing unit in its entirety, then the application and notice for the horizontal well unit shall be served by the applicant no less than fifteen (15) days prior to the date of the hearing, by regular mail, upon each person or governmental entity having the right to participate in production from the existing drilling and spacing unit.

(i) Any written consent to the order required under subsection (h) of this Section shall not be a waiver of, nor commitment of, any rights of such owners in either the existing production or the proposed horizontal well unit. If the required percentage of consent cannot be obtained, the applicant may make application to the Commission for a waiver of the consent requirement, and upon a showing of good cause by the applicant, the Commission may waive the consent requirement. For purposes of this subsection, a showing of good cause means applicant must present sufficient testimony and evidence, and the Commission must find in the order, that applicant has established the following:

(1) Due diligence was exercised to locate each owner having a right to drill in any existing well and/or any existing drilling and spacing unit producing from the same common source of supply as the proposed horizontal well unit;

(2) A bona fide effort was made to obtain the required percentage of consent;

(3) Alternate methods of development are inadequate to prevent waste and to protect correlative rights unless the consent requirement is waived and the proposed horizontal well unit created; and

(4) Any correlative rights or vested rights, or both, of owners in the existing well(s) and/or drilling and spacing unit(s), and in the proposed horizontal well unit, will be adequately protected if the consent requirement is waived and the proposed horizontal well unit created.

(j) If a horizontal well unit formed under subsection (g) of this Section is determined to exist concurrently with any previously formed non-horizontal drilling and spacing unit, or any portion thereof, the order forming such horizontal well unit shall provide that each concurrently existing unit may be separately developed in that a well may be drilled into, completed in, and produce hydrocarbons from the same common sources(s) of supply in each such concurrently existing unit, with production from such well to be governed by and allocated pursuant to the applicable unit. If a unit is determined to exist concurrently with another unit and is subject to a prior pooling order, which is in full force and effect, the rights relinquished by a non-participating owner which became vested under such prior pooling order in the same common source(s) of supply shall be treated and recognized as vested rights in any subsequent pooling proceeding covering such other unit. An owner, who participated as a working interest owner under an existing pooling order covering a unit that exists concurrently with another unit, need not participate or continue to participate as a working interest owner under any other pooling order covering such other unit in order to continue to participate as a working interest owner under such existing pooling order; provided, however, if such owner does not participate as a working interest owner under such other pooling order, such owner shall relinquish its rights to participate in any well drilled under or otherwise covered by such other pooling order.

165:5-7-6.2. Multiunit horizontal wells in ~~shale~~targeted reservoirs

(a) The application, and the notice of hearing on the application, for an order approving a multiunit horizontal well in a ~~shale~~targeted reservoir pursuant to 52 O.S. §87.8 shall be served no less than fifteen (15) days prior to the date of the hearing, by regular mail, upon each person or governmental entity having the right to share in production from each of the affected units covered by the application.

(b) Notice of hearing regarding an application for an order approving a multiunit horizontal well in a ~~shale~~targeted reservoir pursuant to 52 O.S. §87.8 shall be published as provided in OAC 165:5-7-1(n)(2).

(c) The application for an order approving a multiunit horizontal well in a ~~shale~~targeted reservoir shall contain the following:

(1) The legal description of the affected units.

(2) The name and address of the applicant and proposed operator of the proposed well.

(3) The name and depth of each ~~shale~~targeted reservoir to be affected, including any potential associated common source of supply.

(4) The information required by 52 O.S. §87.8(B)(4).

(5) Allegations concerning the existence of facts relating to the proposed well as provided in 52 O.S. §87.8(B)(6).

(6) Reference to any companion application, identified by the type of requested relief, such as any application for spacing, for location exception, for increased density, for pooling, for modification of any previous pooling order, or for any other relief that may be appropriate under the specific facts of a cause, if such companion application is filed in conjunction with or is pending at the time of the filing of the application for multiunit horizontal well(s).

(d) An order approving an application for a multiunit horizontal well in a ~~shale~~targeted reservoir shall require the allocation of the reasonable drilling, completion and production costs and of the commingled production and proceeds in accordance with 52 O.S. §87.8(B) and the map(s) addressed in 52 O.S. §87.8(B)(4)(b) must be attached to the order.

(e) Any pooling application filed pursuant to 52 O.S. §87.8(B)(3) involving a multiunit horizontal well for a ~~shale~~targeted reservoir shall be filed pursuant to OAC 165:5-7-7.

165:5-7-9. Well location exception

(a) The application and notice of hearing for an order granting a well location exception for a well drilled or to be drilled for oil or gas into any common source of supply at a location other than that authorized by a rule or order of the Commission shall be served by the applicant no less than fifteen (15) days prior to the date of the hearing, by regular mail, upon the operator of each well located in an adjoining or cornering tract of land or drilling and spacing unit, currently producing from the same common source of supply, toward which tract or unit the well location has been or is proposed to be moved. The application and notice of hearing shall specify the name(s) of the well(s) and operator(s) of the well(s) towards which the location exception well is moving. The application and notice of hearing also shall be served, in the manner required above, upon the operator of any well located in an adjoining or cornering tract of land or drilling and spacing unit currently producing from the same common source of supply, if the requested well location is closer to the offsetting well than would be permitted under the applicable well location tolerances or requirements. Provided, however, if the applicant, or any other entity to be authorized to drill or otherwise operate the subject well, is the operator of any of the wells identified above, then the application and notice of hearing shall be served, in the manner required above, upon each working interest owner in any such well.

(b) An application and notice of hearing for an order granting a well location exception pursuant to this Section may also include a request for an exception to OAC 165:10-3-28(c)(2). The application and notice of hearing shall be served in the manner required in subsection (a) of this Section, and shall contain the information required in such subsection. Where an application includes requested relief for both a location exception and exception to OAC 165:10-3-28(c)(2), such application shall separately identify respondents for the location exception and respondents for the exception to OAC 165:10-3-28(c)(2).

(~~b~~c) For any well other than a directionally drilled well or a horizontal well, the application and notice of hearing for a location exception shall specify the proposed or actual surface location of the well expressed in feet from the two nearest boundaries of the drilling and spacing unit, or, if no drilling and spacing unit has been established, from the two nearest boundaries of the mineral estate(s) upon which the well will be or has been drilled.

(~~c~~d) For a directionally drilled well, the application and notice of hearing for a location exception shall specify the proposed or actual subsurface location of the well's entry into and the proposed or actual subsurface location of the well's exit from the common source of supply for which the location exception is requested, expressed in feet from the two nearest boundaries of the drilling and spacing unit or, if no drilling and spacing unit has been established, from the two nearest boundaries of the mineral estate(s) upon which the well will be or has been drilled. For purposes of this section, a directionally drilled well does not include a horizontal well.

(~~d~~e) For a horizontal well, the application and notice of hearing for a location exception shall specify the proposed or actual subsurface location of the completion interval, as defined by OAC 165:10-3-28, within the common source of supply for which the location exception is requested, expressed as the distance in feet from the nearest boundaries of the drilling and spacing unit or, if no drilling and spacing unit has been established, from the nearest boundaries of the mineral estate(s) upon which the well will be or has been drilled.

(~~e~~f) The proposed subsurface location for a directionally drilled well or a horizontal well may be described in the application and notice of hearing as no closer than specified footages from the nearest boundaries of the drilling and spacing unit or, if no drilling and spacing unit has been established, from the nearest boundaries of the mineral estate(s) upon which the well will be drilled.

(~~f~~g) At the time of hearing, a well's location, as set out in the application and notice of hearing, may be changed to another location that is not closer to the boundaries of the drilling and spacing unit or mineral estate(s) described in the application and notice of hearing, that is not closer to any offsetting well the operator of which, or any working interest owner in which, was required to be notified under this section, and that does not require notice to additional operators or working interest owners under this section.

(~~g~~h) If at the time of the hearing on an application for a directionally drilled well or a horizontal well, the applicant does not have the results of the well survey required by OAC 165:10-3-27, then the Administrative Law Judge may recommend the issuance of an interim order granting the application and, if so, shall consider whether to adjust the allowable based on the potential locations of the well in each common source of supply for which the order is sought. All potential locations shall be considered in the interim order. If the directionally drilled well or the horizontal well is drilled and completed in compliance with the interim order, the well shall be assigned the allowable as set out in the interim order.

(~~h~~i) If a directionally drilled or horizontal well is drilled and completed in compliance with an interim order approving a location exception, and no party of record has requested a hearing, the Commission may issue a final order approving the location exception, without further hearing, based on an

administrative review by the Commission's Technical Services Department of the following documents, which the applicant must file with the Court Clerk for the record: the directional survey, a final plat showing the actual location of the lateral, and the well completion report. The applicant must also submit a proposed final order to the Commission's Technical Services Department in any cause handled through the administrative review process. In the event the directional survey shows that a directionally drilled or horizontal well was not drilled and completed in compliance with the interim location exception order, the applicant shall notify the Commission and all of the parties entitled to notice in the original hearing establishing the interim order by filing an amended application in the cause setting forth the actual subsurface locations of the well and by giving proper notice thereof. The actual subsurface locations of the well will be considered at a hearing conducted on the date specified in the interim location exception order, or on such date to which the hearing is continued.

(~~i~~j) Notice of hearing on an application for an order granting a well location exception for a well drilled or to be drilled for oil or gas at a location other than that authorized by a rule or order of the Commission shall be published pursuant to OAC 165:5-7-1(n)(2).

165:5-7-35.1. Change of operator regarding commercial pit, commercial soil farming site and/or commercial recycling facility

(a) **Application.** Each application requesting the issuance of an order changing a designation of operator in an order authorizing a commercial pit under 165:10-9-1, a commercial soil farming site under 165:10-9-2 and/or a commercial recycling facility under 165:10-9-4 (collectively "commercial facility") shall comply with the application requirements of OAC 165:5-7-1(a) through (e).

(b) **Notice of application.** Notice of the application for a change of operator regarding a commercial facility shall be published one time in a newspaper of general circulation in Oklahoma County, Oklahoma, and in a newspaper of general circulation published in each county in which the subject lands are located. The notice shall include the following information:

(1) The legal description of the commercial facility~~ to the nearest ten-acre tract~~.

(2) The name and physical mailing address of the current operator of the commercial facility and the name and physical mailing address of any entity to whom transfer of operation of such facility is sought.

(3) The name, physical mailing address, telephone number, electronic mail address and facsimile number of the applicant or its representative, whom anyone may contact for additional information concerning the application.

(4) The notice must also include the following language:

(A) Written protests to the relief sought must be filed with the Court Clerk's Office, Oklahoma Corporation Commission, P.O. Box 52000, Oklahoma City, OK, 73152-2000, submitted to the applicant or its representative and to the Manager of the Pollution Abatement Department, Oklahoma Corporation Commission, P.O. Box 52000, Oklahoma City, OK, 73152-2000, within fifteen (15) days of the later of the date of publication of the notice of application and service of the application and notice of application on all respondents in the cause. Written protests must specify the name of the applicant, cause number, reasons for protest, and the name(s), physical mailing address(es), telephone number(s), electronic mail address(es) and facsimile number(s) of the protestant(s).

(B) If there are no written protests to the application and the Commission does not require a hearing, the application shall be presented to the Manager of the Pollution Abatement Department for administrative review without a hearing, and if the application is protested, then any protestants shall receive notice of hearing.

(c) **Procedure.**

(1) If a written protest to the application is filed with the Commission's Court Clerk's Office, submitted to the applicant or its representative and to the Manager of the Pollution Abatement Department within fifteen (15) days of the later of the date the notice of application is published and service of the application and notice of application on all respondents in the cause, or if hearing is required by the Commission, the application shall be set for hearing and notice thereof given in the same manner required in the filing of an application on the Pollution Docket.

(2) If no written protest is filed with the Commission's Court Clerk's Office, submitted to the applicant or its representative and to the Manager of the Pollution Abatement Department and the Commission does not require a hearing, the application shall be presented to the Manager of the Pollution Abatement Department for administrative review.

(d) **Persons to whom notice shall be given.** The applicant shall serve a copy of the application and notice of the application on:

(1) The Manager of the Pollution Abatement Department, Oklahoma Corporation Commission, P. O. Box 52000, Oklahoma City, Oklahoma 73152-2000,

(2) The Oklahoma Conservation Commission, 2800 North Lincoln Boulevard, Suite 160, Oklahoma City, Oklahoma 73105.

(3) Each surface owner and surface lessee on each tract of land adjacent and contiguous to the facility.

(e) **Proof of notice.** The applicant shall file a certificate of service and affidavit(s) of publication with the Commission's Court Clerk's Office.

PART 5. PUBLIC UTILITIES

165:5-7-53. Certificate of convenience and necessity for telephone lines

(a) Pursuant to 17 O.S. §§131, et seq., notice that an application has been filed for a certificate of public convenience and

necessity to construct, build, equip or operate public telephone toll or long-distance line or lines or any public telephone exchange or exchanges in any territory shall be published once a week for two (2) consecutive weeks in some newspaper of general circulation in each territory affected.

(b) No certificate shall issue until the expiration of thirty (30) days from the date of the first publication of notice. If no protest is filed, the Commission may issue the certificate without a hearing. If a written objection to the application is filed within the thirty-day period, the application shall be set for hearing and notice thereof shall be given ~~in the same manner as required for the filing of the application~~by the Applicant filing notice of the hearing in the Office of the Commission's Court Clerk and providing said notice to all parties of record and the Attorney General, at least 10 days prior to the hearing. ~~If no protest is filed, the Commission may issue the certificate.~~

(c) This Section shall not be construed to require any telephone company to secure such a certificate for any extension within or to any territory already served by it or for any extension into a territory contiguous to a territory already served by it on which it has heretofore filed with the Commission an exchange map showing the territory professed to be served by such telephone company.

165:5-7-60. Reciprocity of final orders between states - electric companies

When any ~~rural electric distribution cooperative~~electric company serves ~~the lesser of~~less than ten percent (10%) of its total customers or five hundred (500) of its members for rural electric cooperatives within the State of Oklahoma, the rates, charges, and terms and conditions of service within the Oklahoma portion of such service territory shall be those prescribed by the regulatory agency of the adjacent state within which the central office of the ~~rural electric distribution cooperative~~electric company is located; provided that:

(1) The ~~rural electric cooperative~~electric company shall file all pleadings with this Commission within ten (10) days subsequent to filing the pleadings with the adjacent state where such central office or offices are located~~, or within ten (10) days of the effective date of this Section~~.

(2) The ~~rural electric distribution cooperative~~electric company shall publish or provide actual notice ~~for~~to the customers located within Oklahoma stating that the customer may contact the Commission regarding any objection to the proposed rate increase.

(3) The consumers shall be individually notified of the date when the thirty-day time period will lapse and that any protest must be entered prior to that date with the Director of Public Utilities, Oklahoma Corporation Commission, Jim Thorpe Office Building, Oklahoma City, Oklahoma 73105.

(4) The ~~rural electric distribution cooperatives~~electric company shall comply with all rules and regulations prescribed by the Commission or in the absence of that compliance shall clearly indicate by footnoting on the filed tariffs and/or terms and conditions of service, any and all departures from the Commission's Rules and Regulations Governing Electric Utilities, OAC 165:35, which are currently in effect.

(5) Such rates and charges prescribed by an order of the Regulatory Agency of such adjacent state, after hearing on the merits have been held in such adjacent state, shall be filed with the Corporation Commission of the State of Oklahoma.

(6) Unless this Commission, within thirty (30) days after filing of the rates and charges approved by the adjacent state, determines that additional hearings are required to either accept or reject such rates and charges, then such rates and charges shall be lawfully effective for the next regular billing for the Oklahoma customers served by the rural electric distribution cooperative.

SUBCHAPTER 13. INITIAL AND SUBSEQUENT PROCEEDINGS

165:5-13-5. Exceptions to Report of Administrative Law Judge

(a) **Reviewability.** Except as provided in OAC 165:5-9-6(c) for rulings on continuances, any report from Administrative Law Judges shall be subject to review in the manner prescribed in this Section. Oral argument before the Commission en banc in an oil and gas or transportation related matter is not a matter of right. The Commission en banc may deny a motion to entertain oral argument on any oil and gas or transportation related exceptions without a response being filed or hearing oral presentation on said motion.

(1) **Oral exceptions regarding motions and emergency matters.** Any person adversely affected by a decision of an Administrative Law Judge on the motion/emergency docket shall have no more than five (5) days in which to advise the Administrative Law Judge, other parties of record, and the Office of General Counsel of his or her intent to lodge exceptions and any request for oral arguments on the exceptions before the Commission en banc. Written exceptions shall not be required. Oral exceptions shall be set for hearing before the Corporation Commission sitting en banc unless referred to an Oil and Gas Appellate Referee or an Administrative Law Judge regarding matters involving issues addressed in Chapters 10, 15, 16, 20, 25, 26, 27, 28, 29, 30 and/or 32. Oral exceptions in all other matters shall be set for hearing before the Commission sitting en banc. Oral exceptions will be set on the next regularly scheduled day for such matters unless:

(A) The parties agree to another date; or

(B) The Commission specifies otherwise.

(2) **Exceptions to the report from the hearing on the merits.** Any person adversely affected by a report of an Administrative Law Judge from the hearing on the merits shall have ten (10) business days in which to file exceptions to the report before the Commission en banc. To perfect exceptions, written exceptions must be filed within ten (10) business days after filing of the Report of

the Administrative Law Judge. The person filing exceptions shall serve copies of the exceptions and notice of hearing for the exceptions on all parties of record and the Administrative Law Judge below. Such service shall be made not later than five (5) days after the expiration of the ten (10) business day period for filing the exceptions. In exceptions before the Commission en banc arising from the Petroleum Storage Tank and/or Indemnity Fund, an additional ten (10) business days shall be allowed for the filing of cross exceptions. OAC 165:5-13-2 shall govern the setting of the exceptions. If a party desires the Commission en banc to hear oral arguments on any exceptions, a motion for oral argument of exceptions before the Commission en banc must be filed with the exceptions.

(b) **Contents of the exceptions.** For purposes of (a)(2) of this Section, the written exceptions shall specifically state the findings or portions of the report to which the person takes exception, and in what respect the person alleges the findings and report to be in error. A person may be permitted to amend his exceptions, or to present at the initial hearing on exceptions thereon additional grounds for exceptions from the report. A person taking exception from any part of the summary of the evidence stated in the report of the Administrative Law Judge, shall attach to his exceptions a transcript or what he deems a correct summary of the pertinent evidence, provided that if the transcript is unavailable at the time of filing of the exceptions, then any person filing exceptions desiring to use a transcript instead of a summary of evidence shall, at the discretion of the Commission en banc, or the Oil and Gas Appellate Referee or Administrative Law Judge to whom the exceptions have been referred, submit the transcript as soon as it is available. In the absence of such a transcript or summary of the evidence, the exceptions shall be considered based on the summary of evidence in the appealed report.

(c) **Responses to written exceptions.** For purposes of exceptions under (a)(2) of this Section, any other person may file written response to the exceptions within five (5) business days after service thereof, and may attach thereto a transcript or his own summary of the pertinent evidence, provided that if a transcript is unavailable at the time of the filing of the exceptions, the party desiring to use the transcript instead of a summary of evidence shall, at the discretion of the Commission en banc, or the Oil and Gas Appellate Referee or Administrative Law Judge to whom the exceptions have been referred, submit the transcript as soon as it is available. In the absence of a transcript or written summary of evidence submitted by a party of record, the exceptions shall be considered upon the summary of the evidence in the exceptions to the report.

(d) **Contents of the Oil and Gas Appellate Referee or Administrative Law Judge Reports.** In a case where exceptions are referred to an Oil and Gas Appellate Referee or Administrative Law Judge, such Referee or Administrative Law Judge shall file a written report, stating a recommendation to the Commission to affirm, reverse, or modify the findings of fact or conclusions of law of the Administrative Law Judge below or to remand the cause for further hearing. The Commission, as the final arbiter, shall enter the order it deems appropriate.

(e) **Scope of review by the Commissioners.** With respect to any report, the Commission sitting en banc may affirm, reverse, or modify the findings of fact or conclusions of law of the Administrative Law Judge, or may remand the cause for further hearing. The Commission shall enter the order in its discretion as it deems appropriate.

SUBCHAPTER 27. PROCEDURES FOR PIPELINE SAFETY DEPARTMENT ENFORCEMENT ACTIONS

PART 1. GENERAL

165:5-27-1. Purpose

The purpose of this Subchapter is to provide procedural rules to govern proceedings before the Commission to enforce the provisions of the Oklahoma Underground Facilities Damage Prevention Act, 63 O.S. §§ 142.1 et seq. regarding excavation or demolition on or near or directly over the location of, and notice of damage to, oil and natural gas physical facilities which are described by the currently effective definition of "pipeline" in 49 C.F.R. § 192.3 and "pipeline" and "pipeline system" in 49 C.F.R. § 195.2, pursuant to 63 O.S. § 142.13. The following rules apply to all enforcement actions subject to this Subchapter:

(1) OAC 165:5-1-3 (Definitions)
(2) OAC 165:5-1-4 (Office location; office hours; records)
(3) OAC 165:5-1-4.1 (Open records requests)
(4) OAC 165:5-1-5 (Filing of documents)
(5) OAC 165:5-1-6 (Time computations and extensions; effective date)
(6) OAC 165:5-1-8 (Place of hearing)
(7) OAC 165:5-1-9 (Telephonic testimony)
(8) OAC 165:5-1-11 through OAC 165:5-1-14.2 (Electronic Filing of Documents)
(9) OAC 165:5-5-1 (Dockets; identifying initials)
(10) OAC 165:5-9-2 (Subsequent pleadings)
(11) OAC 165:5-9-3 (Emergency applications)
(12) OAC 165:5-9-4 (Intervention and parties of record)
(13) OAC 165:5-9-5 (Joinder and consolidation of parties and proceedings)
(14) OAC 165:5-9-6 (Continuances)
(15) OAC 165:5-11-2 (Prehearing conference)
(16) OAC 165:5-13-1 (Sessions and hearings)
(17) OAC 165:5-13-2 (Setting of causes)
(18) OAC 165:5-13-3 (Hearings)
(19) OAC 165:5-13-4 (Report of Administrative Law Judge)
(20) OAC 165:5-13-5 (Exceptions to Report of Administrative Law Judge)
(21) OAC 165:5-15-1 (General form and procedure [orders])
(22) OAC 165:5-15-7 (Emergency orders)
(23) OAC 165:5-17-1 ([Post order relief] Within 10 days; motion)

(24) OAC 165:5-17-2 (After 10 days; application)
(25) OAC 165:5-17-4 (Nunc Pro Tunc)
(26) OAC 165:5-17-5 (Appeals)
(27) OAC 165:5-19-2 (Waiver or reduction of fines and penalties upon small business)

165:5-27-2. Scope

(a) This Subchapter shall be known as the Oklahoma Corporation Commission Rules of Practice for Pipeline Safety Department enforcement actions and may be cited as OAC 165:5-27-1 et seq.

(b) This Subchapter shall govern all proceedings concerning Pipeline Safety Department enforcement actions arising under the Act and the implementing rules of the Commission.

(c) This Subchapter shall not be construed as limiting the Commission's authority to grant an exception, for good cause shown, to any rule contained herein unless otherwise precluded by law.

(d) Nothing in this Subchapter shall be construed to modify or limit any private right of action arising under the Oklahoma Underground Facilities Damage Prevention Act and enforceable in the district courts of this State.

165:5-27-3. Definitions

In addition to terms defined in 63 O.S. § 142.2, the following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Act" means the Oklahoma Underground Facilities Damage Prevention Act, 63 O.S. §§ 142.1 et seq.

"Pipeline" means pipeline as defined in 49 C.F.R. § 192.3 and 49 C.F.R. § 195.2.

"Pipeline system" means "pipeline system" as defined in 49 C.F.R. § 195.2.

165:5-27-4. Statutory citation

Citations to the Act, 49 C.F.R. § 192.3 and 49 C.F.R. § 195.2 in this Subchapter refer to the most recent codifications of the Act and such sections of the Code of Federal Regulations.

PART 3. ENFORCEMENT

165:5-27-10. Enforcement actions

(a) **Commencement.** A cause filed under this Subchapter by the Pipeline Safety Department to enforce the Act as provided in 63 O.S. § 142.13 and for contempt for disobedience to or violation of an order or judgment of the Commission shall be commenced by the filing of a verified complaint.

(b) **Complaint.** The complaint shall state:

(1) The name of the person, firm, trust, corporation, or association against whom the complaint is made.

(2) Each law, order, rule, regulation of which violation is charged.

(3) A description of the acts or omissions constituting the violation of which complaint is made. If complaint is made of more than one violation, each violation shall be separately stated.

(c) **Citation.** When a complaint is filed, the Secretary shall issue in the name of the state a citation directed to the person against whom complaint is made, which citation shall be accompanied by a copy of the complaint. The citation shall state:

(1) The name of the Director of the Transportation Division and the date the complaint was filed.

(2) A brief description of the nature of the complaint.

(3) Reference to the accompanying copy of the complaint.

(4) The date upon which the complaint is set for hearing, which shall not be earlier than ten (10) days from the date the citation is served.

(5) A statement that, unless the person complained against shall on or before the date for hearing file a response to the complaint, the allegations and charges therein will be taken as confessed.

(d) **Service of citation.** Service of the citation may be made by a person directed to do so by order of the Commission. Such service shall be made in accordance with the rules of the Commission. Service shall be made by personal service or by mailing the citation by certified mail to the respondent's last known address.

(e) **Return of service.** The person making the service shall make his return thereof, and file the same with the Court Clerk. The return shall show the time when the citation was received by him, and the time and manner the same was served by him, and such return shall be verified by the person making the service. Service of the citation for contempt on the respondent by certified mail shall be considered effective if returned from the last known address as listed in Commission records for the following reasons, including, but not limited to:

(1) Signed for by any person at the address listed.

(2) Undeliverable - no forwarding address, forwarding address expired, unclaimed and/or refused.

(f) **Default.** If no response to the complaint is filed on or before the date set for hearing, or if a respondent fails to appear at the time set for hearing, as specified in the citation, the Commission may immediately proceed to hear the complaint. After hearing the evidence, the Commission shall impose such fine, cancellation, suspension, or other order or punishment as the facts and circumstances warrant, or dismiss the complaint.

(g) **Response.** A respondent who desires a hearing shall, on or before the time specified in the citation for hearing, file a response to the merits of the cause and shall appear at the time set for hearing. The response shall include all objections and defenses of any nature to the complaint and may include a motion to dismiss the complaint for reason of insufficiency thereof or lack of jurisdiction.

(h) **Hearing procedures.** At the hearing, the Commission shall first hear all objections and defenses other than to the merits of the complaint and shall enter an appropriate order thereon. Amendments may be permitted upon terms that are just, with or without grant of a continuance. After all preliminary questions are heard, the Commission shall hear the merits

of the complaint, and at the conclusion thereof, shall impose such fine, suspension, cancellation, or other order or punishment as the facts and circumstances warrant, or dismiss the complaint.

(i) **Hearing date.** Every cause instituted hereunder shall be tried on its merits on the date specified in the citation, or at such other time to which such cause shall be continued for hearing by the Commission.

(j) Nothing in this Subchapter shall prevent the Commission's Pipeline Safety Department from attempting pre-contempt remediation of alleged violations through the Notice of Probable Violation procedure found in Subchapter 13 of OAC 165:20.

165:5-27-11. Penalties

(a) If the Commission concludes that the Respondent has committed a violation of the Act, it may enter an order requiring the Respondent to take action to correct the violation, to submit to damage prevention training, imposing penalties not to exceed maximums provided by law, or to fashion other remedies as the interests of justice may require.

(b) Penalties imposed under subsection (a) shall not exceed maximum amounts provided by 17 O.S. § 6.1.

165:5-27-12. Discovery

Discovery for Pipeline Safety Department enforcement actions shall be conducted pursuant to the provisions of the Oklahoma Discovery Code, 12 O.S. §§ 3224-3237. No motion to permit discovery is required. Parties or their attorneys may issue notices for deposition or requests for production or interrogatories as provided in the Oklahoma Discovery Code.

165:5-27-13. Subpoenas

In all Pipeline Safety Department enforcement actions, subpoenas may be issued and served in the manner provided in district courts according to 12 O.S. § 2004.1. No motion to allow subpoenas is required.

(1) References in the statute to "clerk" refer to the Court Clerk of the Commission.

(2) References in the statute to "court" refer to the Commission.

165:5-27-14. Aggrieved persons

Any person aggrieved by a violation of the Act may submit to the Manager of the Pipeline Safety Department of the Commission written information on a form available on the Commission's website relating to an alleged violation or violations and requesting an investigation by the Pipeline Safety Department.

[OAR Docket #15-538; filed 6-12-15]

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

[OAR Docket #15-542]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Chapter 10. Oil & Gas Conservation [AMENDED]
AUTHORITY:
Oklahoma Corporation Commission; 17 O.S. § 52, 27A O.S. § 1-3-101, 52 O.S. § 87.6 *et seq*., 52 O.S. § 139, 68 O.S. § 1001, and OAC 165:5-1-7
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
Although the Oklahoma Corporation Commission is not subject to the requirements of Executive Order No. 2013-34, the proposed rules were submitted to the Governor and Cabinet Secretary on January 15, 2015
COMMENT PERIOD:
January 15, 2015, through February 26, 2015
PUBLIC HEARING:
March 11, 2015
ADOPTION:
March 11, 2015
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 16, 2015
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 8, 2015
FINAL ADOPTION:
June 8, 2015
EFFECTIVE:
August 27, 2015
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The amendments to OAC 165:10-3-28 regarding horizontal drilling were made to conform to amendments to the 2011 Shale Reservoir Development Act in Senate Bill No. 78 (2014)(52 O.S. §§ 87.6 through 87.9). The amendments to Subchapter 21 Applications for Tax Exemptions were made to conform to amendments to 68 O.S. § 1001 in House Bill No. 2562 (2014). OAC 165:10-1-7 was amended to provide for use of a new Form 1006BT-A by operators of truck wash pits who are required to file agreements with the Commission regarding closure of such pits pursuant to OAC 165:10-7-33 regarding truck wash pits. OAC 165:10-1-7 was also amended to provide for use of a new Form 1006BT-B by operators of truck wash pits who are required to file surety with the Commission for closure, reclamation and remediation of such pits pursuant to OAC 165:10-7-33. OAC 165:10-1-7 was also amended to provide for use of a new Form 1014RW by operators applying for permits to use reclaimed water in oil and gas operations in conjunction with new rule OAC 165:10-7-34. Other rules were amended in an effort to update, standardize and streamline language and procedures appearing in OAC 165:10, as well as to address changes in technology, especially with respect to horizontal drilling.
CONTACT PERSON:
Susan Dennehy Conrad, Deputy General Counsel, Office of General Counsel, Oklahoma Corporation Commission, 2101 North Lincoln Boulevard, PO Box 52000, Oklahoma City, OK 73152-2000, telephone: (405) 521-3939, s.conrad@occemail.com.

DUE TO EXCESSIVE LENGTH OF THESE RULES (AS DEFINED IN OAC 655:10-7-12), THE FULL TEXT OF THESE RULES WILL NOT BE PUBLISHED. THE RULES ARE AVAILABLE FOR PUBLIC INSPECTION AT THE OKLAHOMA CORPORATION COMMISSION, WESTERN REGIONAL SERVICE OFFICE, JIM THORPE OFFICE BUILDING, 2101 NORTH LINCOLN BOULEVARD, OKLAHOMA CITY, OKLAHOMA, AT THE OKLAHOMA CORPORATION COMMISSION, EASTERN REGIONAL SERVICE OFFICE, KERR BUILDING, 440 SOUTH HOUSTON, SUITE 114, TULSA, OKLAHOMA, AND AT THE SECRETARY OF STATE'S OFFICE OF ADMINISTRATIVE RULES. THE FOLLOWING SUMMARY HAS BEEN PREPARED PURSUANT

TO 75 O.S., SECTION 255(B):

SUMMARY:

OAC 165:10-1-2 is amended to modify the definition of commercial disposal well and to add definitions of business day, public water supply well(s) or public water well(s), reclaimed water and regular mail; OAC 165:10-1-4 to update the list of effective dates for OAC 165:10 rulemakings; OAC 165:10-1-7 to update the list of Oil and Gas Conservation Division prescribed forms; OAC 165:10-1-24 regarding applications for emergency orders pertaining to well location exceptions; OAC 165:10-3-1 concerning temporary authorization to commence activities without an approved permit to drill; OAC 165:10-3-4 to delete provisions regarding notice of hydraulic fracturing operations and to revise rule subsections accordingly; OAC 165:10-3-10 to add provisions concerning notice of hydraulic fracturing operations and to change a reference from municipal water supplies to public water supplies, and OAC 165:10-3-28 is amended regarding horizontal drilling in accordance with 52 O.S. § 87.6 *et seq*. and amendments thereto in Enrolled Senate Bill No. 78 (2014). OAC 165:10-3-28 is also amended concerning minimum distance of the perforated interval of an oil or gas non-horizontal well from the completion interval of any oil or gas horizontal well completed in the same common source of supply.

OAC 165:10-5-2 is amended to change a reference from municipal water supply wells to public water supply wells with respect to approval of enhanced recovery injection wells or disposal wells; OAC 165:10-5-7 to add a provision regarding notice of initial commencement of operations for wells permitted as disposal wells in the Arbuckle formation and to revise rule subsections accordingly; OAC 165:10-7-5 regarding reporting of discharges of deleterious substances; OAC 165:10-7-6 to change a reference from protection of municipal water supplies to protection of public water supplies; OAC 165:10-7-16 to change references from municipal water wells to public water wells and from working days to business days with respect to noncommercial pits; OAC 165:10-7-17 to change references from municipal water wells to public water wells and from working days to business days regarding surface discharge of fluids, and OAC 165:10-7-19 is amended to change references from municipal water wells to public water wells and from working days to business days concerning land application of water-based fluids from earthen pits, tanks and pipeline construction.

In addition, OAC 165:10-7-20 is amended to change references from working days to business days with respect to noncommercial disposal or enhanced recovery well pits used for temporary storage of saltwater; OAC 165:10-7-22 to change references from working days to business days regarding permits for County Commissioners to apply waste oil, waste oil residue, or crude contaminated soil to roads; OAC 165:10-7-26 to change references from municipal water wells to public water wells and from working days to business days concerning land application of contaminated soils and petroleum hydrocarbon based drill cuttings; OAC 165:10-7-27 to change references from working days to business days regarding application of waste oil, waste oil residue, or crude oil; OAC 165:10-7-28 to change references from working days to business days with respect to application of freshwater drill cuttings by County Commissioners; OAC 165:10-7-29 to change references from working days to business days concerning application of freshwater drill cuttings by oil and gas operators; OAC 165:10-7-33 is amended regarding truck wash pits, and OAC 165:10-7-34 is a new rule concerning use of reclaimed water in oil and gas operations.

Further, OAC 165:10-9-1 is amended to change references from municipal water wells to public water wells with respect to commercial pits; OAC 165:10-9-2 to change references from municipal water wells to public water wells and from working days to business days concerning commercial soil farming; OAC 165:10-9-3 to change references from working days to business days regarding commercial disposal well surface facilities, and OAC 165:10-9-4 to change references from municipal water wells to public water wells with respect to commercial recycling facilities.

OAC 165:10-21-21, OAC 165:10-21-22, OAC 165:10-21-24, OAC 165:10-21-35, OAC 165:10-21-36, OAC 165:10-21-38, OAC 165:10-21-45, OAC 165:10-21-47, OAC 165:10-21-47.1, OAC 165:10-21-55, OAC 165:10-21-58, OAC 165:10-21-68, OAC 165:10-21-75, OAC 165:10-21-76, OAC 165:10-21-78, OAC 165:10-21-80, OAC 165:10-21-82, OAC 165:10-21-82.2, OAC 165:10-21-82.3 and OAC 165:10-21-85 in Subchapter 21, Applications for Tax Exemptions, are amended in accordance with 68 O.S. § 1001 and amendments thereto in Enrolled House Bill No. 2562 (2014), and OAC 165:10-29-2 is amended regarding alternative location requirements for horizontal well units.

The full text of these rules may be obtained by interested parties at the Oklahoma Corporation Commission's Oklahoma City Court Clerk's Office located in the Jim Thorpe Office Building, 2101 North Lincoln Boulevard, Oklahoma City, Oklahoma, 73105, at the Commission's Tulsa Court Clerk's Office located in the Kerr Building at 440 South Houston, Suite 114, Tulsa, Oklahoma, 74127, and on the Commission's website at http://www.occeweb.com.

[OAR Docket #15-542; filed 6-15-15]

TITLE 165. CORPORATION COMMISSION
CHAPTER 15. FUEL INSPECTION

[OAR Docket #15-439]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions
165:15-1-1. Purpose [AMENDED]
165:15-1-2. Definitions [AMENDED]
165:15-1-3. Application of rules [AMENDED]
Subchapter 3. Fuel Specialists, Testing, Accessibility, and Assistance
Part 1. General Authority
165:15-3-1. Authority to enter and/or stop for inspection [AMENDED]
165:15-3-2. Authority to lock or seal for violation [AMENDED]
165:15-3-3. Authority to remove lock or seal after correction of violation [AMENDED]
Part 5. Liquid Measuring Devices
165:15-3-15. Fuel Specialist's duty [AMENDED]
165:15-3-16. Inspection for compliance [AMENDED]
Part 7. Storage Tanks and Ancillary Equipment
165:15-3-20. Water in storage tanks [AMENDED]
165:15-3-21. Containment of petroleum products [AMENDED]
165:15-3-21.1. Leak detection and cathodic protection records [AMENDED]
165:15-3-22. Equipment installation [AMENDED]
165:15-3-24.3. Farm inspections [AMENDED]
Subchapter 7. Specifications, Standards, and Labeling for Motor Fuels
165:15-7-1. Applicability and general compliance [AMENDED]
165:15-7-2. Gasoline ~~and gasohol~~ [AMENDED]
165:15-7-3. Kerosene [AMENDED]
165:15-7-4. Aviation gasoline [AMENDED]
165:15-7-5. Diesel fuel [AMENDED]
165:15-7-7. Aviation turbine fuel [AMENDED]
Subchapter 9. Description of Motor Fuel
165:15-9-3. ~~Alcohol, ethanol or ethyl alcohol~~Motor fuel sold at airports for fueling auxiliary support equipment [AMENDED]
Subchapter 15. Liquid Measuring Devices
Part 9. Equipment and Operations
165:15-15-40. Maintenance of equipment [AMENDED]
165:15-15-46. Discharge hose at retail facilities [AMENDED]
Part 11. Special Permits [REVOKED]
165:15-15-65. Application for special permit [REVOKED]
Subchapter 19. Violations and Contempt
165:15-19-2. Enforcement procedure [AMENDED]
165:15-19-3. Notices of Violation [AMENDED]
165:15-19-4. Re-inspection, Enforcement and Fine Citation [AMENDED]
165:15-19-5. Payment of fine or hearing [AMENDED]

AUTHORITY:

The Commission's statutory authority is found in 17 0.S. §§ 306, 307, 321, 52 O.S. § 325, 83 O.S., § 112.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

n/a

COMMENT PERIOD:

October 30, 2014 to January 16, 2015

PUBLIC HEARING:

February 5, 2015

ADOPTION:

February 5, 2015

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 13, 2015
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 8, 2015
FINAL ADOPTION:
June 8, 2015
EFFECTIVE:
August 27, 2015
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The adopted rules clarify certain ambiguities that arose during the calendar year, remove obsolete or incorrect references and require specific attention to water in tanks with the advent of ethanol based fuel and the water problems associated with the same. Fuel measurement, fuel component and standards for the same have evolved. The adopted rules update current practices to align with changes in the fuel industry.
CONTACT PERSON:
Jeff Southwick, Deputy General Counsel, Office of General Counsel, Oklahoma Corporation Commission, 2101 N. Lincoln Blvd., P.O. Box 52000, Oklahoma City, OK 73152-2000, (405)522-4457, j.southwick@occemail.com.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 1. GENERAL PROVISIONS

165:15-1-1. Purpose

The purpose of this Chapter is to provide a comprehensive regulatory program governing the sale and ~~use~~storage of regulated substances such as gasoline, kerosene, aviation fuel, and diesel fuel, and specify standards governing the measuring devices and facilities used to sell, dispense, or deliver these products ~~to the public~~. This Chapter is intended to protect the ~~customer~~ end user by regulating the integrity and quantity of the product sold; protect the public and the environment from fire,~~and~~ explosion and ~~the environment from~~ pollution; assist the tank ~~owner or operator~~owner/operator regarding~~by explaining the reason for this Chapter and its practical purpose; and show the owner~~ how to maintain a petroleum storage tank system to avoid damages or deterioration of the system, economic loss to the ~~owner~~owner/operator, and damages to others.

165:15-1-2. Definitions

"API (American Petroleum Institute) gravity scale" means the gravity scale in general use by the petroleum industry in the United States.

"ASTM" means the American Society for Testing and Materials. The latest ASTM revision must be the test used and is expressly incorporated in this Chapter.

"ATG" means an automatic tank gauging system.

"Aboveground storage tank" or **"AST"** means any stationary tank not included within the definition of an underground storage tank in OAC 165:25-1-11, which is designed to contain, without structural support of earthen material, antifreeze, motor oil, gasoline, diesel, aviation fuel and/or volatile blending materials used in motor fuels, like kerosene and ethanol.

"Aboveground storage tank system" means an aboveground storage tank and any connected aboveground or underground piping, dispensers and associated equipment and fixtures.

"Airport" means landing facility for aircraft that is routinely available for public use (whether routinely used or not). Airports as used in this Chapter do not include private residential airstrips or private airports.

~~**"Alcohol"** or **"ethanol"** or **"ethyl alcohol"** means denatured ethyl alcohol with the chemical formula of C_2H_5OH used as a component in gasoline. The use of any other type of alcohol for motor fuel purposes must be specifically defined by the Commission upon application and order.~~

"Analog type" means an indicating element or a system of indication or recording in which values are presented as a series of numbered graduations in combination with an index, and in which the most sensitive element of the indicating system moves continuously during the operation of the device.

"Ancillary equipment" means any device including, but not limited to devices such as piping, fittings, flanges, valves, and pumps that are used to distribute, meter, or control the flow of regulated substances to or from an underground storage tank.

"Approval seal" means ~~a~~an inspection label or tag pasted on the face of a ~~device~~ dispenser indicating its official approval, showing day, month, and year.

"Aviation gasoline" means a volatile hydrocarbon fuel suitable for use in an aircraft internal combustion engine.

"Bulk plant" means a petroleum storage tank facility where ~~antifreeze, gasoline, aviation fuel, diesel and/or volatile blending materials used in motor fuels, like kerosene and ethanol,~~ regulated substances are received by tank vessels, pipelines, tank cars or tank vehicles and are stored or blended in mass quantities or bulk for the purpose of distribution by a tank vessel, pipeline, tank car, tank vehicle, portable tank or other container, for wholesale or retail sale.

"Calibrate" or **"Calibration"** means the comparison of the indicated volume to the volume actually delivered by a retail or wholesale device into a certified test measure, prover, or through a second accurate meter.

"Cathodic protection" means a technique designed to prevent the corrosion of a metal surface by making it the cathode of an electrochemical cell.

"Change in service" means discontinuing the use of a storage tank system for purposes regulated by the Commission.

~~**"Coin operated devices,""token operated devices"** or **"money operated devices"** means devices that release products upon the insertion of coins, tokens, or monies, and are designed to make deliveries of product corresponding to specific money values at a definite unit price.~~

"Commission" means the Corporation Commission of Oklahoma.

"Computing type" means a device designed to indicate and measure the total money value of product for one of a series of unit prices.

"Diesel fuel" means a hydrocarbon or biodiesel fuel suitable for use in a diesel engine.

"Digital type" means a system of indicating or recording that advances intermittently in which all values are presented digitally and without graduations.

"Director" means the Director of the Petroleum Storage Tank Division of the Corporation Commission.

"Division" means the Petroleum Storage Tank Division of the Corporation Commission.

"Dry hose type" means a device in which the discharge hose must be completely drained following the mechanical operations involved in each delivery.

"Face of the pump" means that side of a measuring device that displays the quantity measured. The face must include an indicator and a series of graduations or present values digitally. It is the side of the pump where the unit price, volume dispensed, and dollar amount of the sale appear.

"Fuel" means any petroleum product, oxygenate, or blend of products suitable for use in an internal combustion or diesel engine.

"Fuel Specialist" means any field inspector employed by the Fuel Inspection and Compliance Department of the Petroleum Storage Tank Division of the Oklahoma Corporation Commission.

~~**"Gasohol"** means an unleaded motor fuel containing 9 parts gasoline to 1 part denatured ethyl alcohol (ethanol) by volume. The mixture must be suitable for use in a spark ignition, internal combustion engine~~.

"Gasoline" means a volatile unleaded ~~hydrocarbon~~ fuel that is suitable for use in a spark ignition, internal combustion engine. ~~It may be one of any grade specified in Subchapters 5 and 9 of this Chapter.~~

"Gravity type" means a type of device designed for discharge by gravity.

"Gum" means the evaporation residue of aircraft gasoline or the heptane insoluble portion of the evaporation residue of motor gasoline.

"Index of an indicator" means that particular portion of an indicator that is directly used in making a reading.

"Indicating element" means that component located on the face of the pump that signifies the amount relative to a quantity measured by a measuring device.

"Isooctane" means a pure hydrocarbon 2,2,4-trimethylpentane used as a reference fuel that has an octane rating of one hundred.

"Kerosene" means a refined hydrocarbon fuel intended for use in heating and illumination.

"Liquid measuring device" or **"liquid fuel device"** means any and all measuring devices (retail, wholesale, or vehicle tank measure) with which gasoline, motor fuel, kerosene, burning oil, diesel fuel, or aviation gasoline is sold, dispensed, or delivered to the public or to any person for any purpose.

"MtBE" means methyl tertiary butyl ether for use as a component in gasoline.

"Manufacturer" means any person engaged in the manufacture of gasoline, motor fuel, kerosene, aviation gasoline, diesel fuel, burning oil, or oxygenate offered for sale or use in the State of Oklahoma, whether such products are manufactured by the method of processing crude petroleum or natural gas or collecting natural or drip gasoline or the blending or mixing of any two or more products obtained from these processing methods. Blending or mixing, as used in this Chapter, does not include the multi-blend pumps at service stations.

"Measuring device" or **"meter"** means all measuring devices (retail, wholesale, or vehicle tank measure) with which gasoline, motor fuel, kerosene, burning oil, diesel fuel, or aviation gasoline is sold, dispensed, or delivered to the public or to any person for any purpose.

"Motor fuel" means any petroleum product, oxygenate, or blend of products that is suitable for use as a fuel in an internal combustion or diesel engine.

~~**"Motor fuel transport tank"** means a tank of one or more compartments mounted on a truck body, or the trailer section of a tractor trailer vehicle used to deliver a motor fuel from a source of supply to a retail outlet, farm, or commercial stationary storage tank.~~

"NACE" means the National Association of Corrosion Engineers.

"N-heptane" means a pure hydrocarbon used as a reference fuel with an assigned octane rating of zero.

"Octane", "octane number", or **"octane rating"** means the antiknock quality of gasoline as determined by either the ASTM Research Method or the ASTM Motor Method.

"Owner or operator" means the person responsible for and in control of a facility's day-to-day operations, whether the person actually possesses a title to the facility or controls it as a lessee or by any other agreement. The term also includes a past operator at the time of a release or a violation of state statutes or Commission rules.

"Oxygenate" means ethyl alcohol, MtBE, TAME, or other oxygen-containing, ashless organic compounds.

"Permanent out of use" or "POU" means a petroleum storage tank system that is not in service/use, does not contain regulated substances, and is not intended to be placed back in service/use.

~~**"Person"** means any individual, trust, firm, joint stock company or corporation, limited liability company, partnership, association, any representative appointed by order of a court, the state, any municipality, county, school district or other political subdivision or agency of the state, or any interstate body. The term also includes a consortium, joint venture, commercial entity, the United States Government, a federal agency, including a government corporation, or any other legal entity.~~

"Petroleum products" means antifreeze, motor oil, gasoline, kerosene, ethanol, diesel and biodiesel fuel and aviation gasoline.

"Primary indicating elements" or **"recording elements"** means those principal visual indicating elements and

recording elements that may be used by the operator in the normal commercial use of a device and which are readily visible to the public.

"Private airport" means an airport used only by its owner and regulated as a fleet and commercial facility.

"Private airstrip" means a personal residential takeoff and landing facility attached to the airstrip owner's home, analogous to a garage and driveway used only by the owner.

"(R+M)/2" means the arithmetic mean of the ASTM Research Method (R) and the ASTM Motor Method (M) octane numbers, and is the octane rating.

~~**"Radio Frequency Interference"** or **"RFI"** means a type of electrical disturbance which, when introduced into electronic circuits, may cause deviations from the normally expected performance.~~

"Regulated substance" means antifreeze, motor oil, motor fuel, gasoline, kerosene, diesel or aviation fuel. It does not include compressed natural gas.

~~**"Release"** means any spilling, overfilling, or leaking from a storage tank system that goes beyond the excavation zone, tankpit, or secondary containment facility into the native environment.~~

"Retail device" means a measuring device or mechanism designed for single deliveries of motor fuels to individual land, air, and water vehicles.

"Retail level" means all places of business where gasoline, motor fuel, kerosene, diesel fuel, or aviation gasoline is dispensed or delivered directly into the tank of the consuming vehicle or receptacle, and may include bulk agents, consignment agents, distributors, or jobbers.

"SIR" means Statistical Inventory Reconciliation.

"Security Seal" or **"seal"** or **"lock/locking mechanism"** means a lead and wire seal, lock or locking device, or similar device, attached to a petroleum storage tank system for protection against access, removal, or adjustment.

~~**"Storage Tank Advisory Council"** means an appointed committee pursuant to 17 O.S. § 340 et seq., which has the authority to recommend rules and make written comments and recommendations to the Commission, and to provide a public forum for the discussion of issues it considers relevant to its area of jurisdiction.~~

"TAME" means tertiary amyl methyl ether for use as a component in gasoline.

"Temporary out of use" or "TOU" means the status of a petroleum storage tank system that has been taken out of service/use, but not removed, with the intent to return to service.

"Tolerance" means a value fixing the limit of allowable error or departure from the highest performance or value.

~~**"Transport"** means a tank of one or more compartments mounted on a truck body, or the trailer section of a tractor trailer vehicle used to deliver a motor fuel from a source to a retail outlet, farm, or commercial stationary storage tank.~~

"Transport calibration" or **"truck calibration"** means the volume held to the designated marker as determined by the addition of a calibration fluid to the compartment from an accurate meter or from provers.

"Underground storage tank" or **"UST"** means a regulated storage tank that has 10 percent or more of its volume beneath the surface of the ground.

"Underground storage tank system" means an underground storage tank and any connected aboveground or underground piping, dispensers and ancillary equipment.

"Unleaded gasoline" means a refined gasoline to which no lead has been intentionally added during the refining or blending process.

~~**"Vehicle tank measure"** means a tank of one or more compartments mounted on a truck body, or the trailer section of a tractor trailer vehicle used to deliver a motor fuel from a source of supply to a retail outlet, farm, or commercial stationary storage tank.~~

"Visible type" means a type of device in which the measurement takes place in visible glass measuring chambers.

"Wet-hose type" means a device designed to be operated with the discharge hose full of liquid at all times.

"Wholesale device" means any device other than a retail device.

165:15-1-3. Application of rules

(a) The rules contained in this Chapter apply to:

(1) All manufacturers and handlers of fuel subject to the jurisdiction of the Commission.

(2) All persons who sell or distribute any petroleum product, motor fuel, oxygenate, or blend of products.

(3) All persons who use liquid measuring devices in the sale or distribution of motor fuel.

(b) All persons who use liquid measuring devices in the sale or distribution of motor fuel, as defined by applicable statutes and (a) of this Section, must comply with this Chapter.

(c) Motor fuel in transit or manufactured in Oklahoma for consumption in other states is not subject to inspection under the rules of this Chapter.

(d) The tolerances on the metric equipment must be equivalent to those specified in English units for similar equipment.

SUBCHAPTER 3. FUEL SPECIALISTS, TESTING, ACCESSIBILITY, AND ASSISTANCE

PART 1. GENERAL AUTHORITY

165:15-3-1. Authority to enter and/or stop for inspection

(a) A Fuel Specialist has the authority to enter upon the premises of any manufacturer, bulk dealer, or retailer of any ~~motor fuel~~regulated substance, as well as any other place where ~~motor fuel~~a regulated substance is or was sold or stored prior to sale or use, and perform tests required by this Chapter, take samples, or make any other investigation in order to ensure compliance with this Chapter or the laws of the State. Fuel Specialists will also inspect TOU petroleum storage tank systems.

(b) The Fuel Specialist has the authority to inspect any records and documents pertaining to the ordering of, delivery of, and/or payment for petroleum products offered for sale.

165:15-3-2. Authority to lock or seal for violation

A Fuel Specialist has the authority to place or to direct that a lock or seal be placed on any pump, delivery device, receptacle, or container tank used in the sale, distribution or storage of ~~motor fuel~~regulated substances in Oklahoma when the rules in this Chapter, Chapter 25, Chapter 26, or a Commission order are being violated.

165:15-3-3. Authority to remove lock or seal after correction of violation

The authority to remove a lock or seal by the owner or operator after a violation is corrected may be obtained by:

(1) ~~Verbal~~Written permission from the Fuel Specialist who placed the lock or seal on the device; coupled with written confirmation to PSTD by the person removing the seal or lock; or

(2) Written or verbal permission from the Division Director or the Director's designee; or

(3) Application to and order of the Commission.

PART 5. LIQUID MEASURING DEVICES

165:15-3-15. Fuel Specialist's duty

Fuel Specialists have the responsibility to implement and enforce the rules of this Chapter, Chapter 25 and Chapter 26, which includes determining that a measuring device and equipment are accurate and as safe as possible for the public and the environment. If a measuring device does not conform to all official requirements, the Fuel Specialist is required to prohibit its use until the device is brought into compliance.

165:15-3-16. Inspection for compliance

(a) Retail liquid measuring devices subject to the rules of this Chapter are calibrated with a five (5) gallon test measure by the Fuel Specialist from time to time or as often as deemed necessary. High volume dispensers (those that are used to pump at a rate of at least twenty (20) gallons per minute) used to fill large tanks must be calibrated using a fifty (50) or one hundred (100) gallon prover.

(b) All wholesale liquid measuring devices subject to the rules of this Chapter must be calibrated by the Fuel Specialist no more than 10 million gallons of use, or more often if the Fuel Specialist deems it necessary.

(c) Before a new facility is open for business and before new dispensers are put into service at a pre-existing facility, the owner or operator must have the dispensers calibrated and be able to show written proof when requested by the Fuel Specialist.

(d) These tests may be ordered or directed by the Commission at any time.

(e) When a liquid measuring device is found not to be in compliance with this Chapter, the owner or operator will be advised of the problem and the device placed out of service.

(f) A Fuel Specialist has the responsibility to place or to direct that a lock or seal be placed on a measuring device. The lock or seal must remain in place until the defective measuring device is repaired or replaced and complies with Commission standards.

(g) The owner or operator of a locked measuring device may obtain permission to remove the lock or seal after repair by:

(1) ~~Verbal~~Written permission from the Fuel Specialist who placed the lock or seal on the device; coupled with written confirmation to PSTD by the person removing the seal or lock; or

(2) Written or verbal permission from the Petroleum Storage Tank Division Director or the Director's designee; or

(3) Order of the Commission.

(h) For a fleet or commercial facility where fuel is dispensed for internal use by the company or its agents, there is no requirement that a Commission Fuel Specialist check the calibration of that facility's dispensers. However, a Fuel Specialist may do so time permitting as a courtesy for an owner or operator.

PART 7. STORAGE TANKS AND ANCILLARY EQUIPMENT

165:15-3-20. Water in storage tanks

(a) **~~Inspection.~~Water in storage tanks in excess of Commission standards is prohibited.** All underground storage tanks must be checked for water by the Fuel Specialist from time to time. However, water inspections by the Fuel Specialist does not remove the responsibility of the tank owner/operator that water levels in tanks do not exceed Commission standards.

(b) **Area surrounding fill pipe.** The area surrounding the fill pipe to the storage tank must not contain any water. When water is present, the owner or operator is responsible for promptly removing the water. Upon the second notice of violation of this subsection, the owner or operator must make whatever system modifications are necessary to prevent water from entering the spill containment and may be subject to citation or formal enforcement action.

(c) **Fill pipe.** All fill pipes to storage tanks must have watertight caps that must be securely fastened at all times, except when servicing the tank(s).

(d) **Water removal; repairs.** When a Fuel Specialist checks a motor fuel storage tank at a retail outlet and finds water in it, it is the responsibility of the owner or operator of the retail outlet to completely remove the water and make necessary repairs to prevent any water intrusion to the storage tank. Water shall not exceed one inch (1") in depth when measured with water indicating paste or other acceptable means in any tank utilized in the storage of diesel, gasoline, gasoline-ether blends, and kerosene sold at retail. No water phase greater than one-fourth inch (1/4") as determined by an appropriate detection paste or

other acceptable means is allowed to accumulate in any tank utilized in the storage of gasoline-alcohol blend, biodiesel blends, E85 fuel ethanol, aviation gasoline, and aviation turbine fuel. The owner or operator is required to find the source of the water including, but not limited to, excavating and replacing the product lines and/or the storage tanks as necessary. This must be done as quickly as possible. The Fuel Specialist or Compliance Manager may be notified verbally or by written confirmation when the necessary repairs have been completed.

(e) **Water from dispensing nozzle.** When a Fuel Specialist checks a retail outlet for water and finds water coming through the dispensing nozzle, it is the responsibility of the Fuel Specialist to immediately take the affected dispensing unit or units out of operation. The owner or operator is required to find the source of the water, including but not limited to, excavating and replacing the product lines and/or the storage tanks as necessary. The product dispensing units are to remain out of operation until the problem(s) are corrected and permission to commence operation is given by the Fuel Specialist to the owner or operator.

165:15-3-21. Containment of petroleum products

Because petroleum product releases can pose a threat to the public health and safety and the environment, Fuel Specialists must ensure that the proper mechanisms are in place and standards met to prevent releases ~~to the greatest extent possible~~.

(1) **Spill and overfill protection.** Fuel Specialists must ensure that appropriate spill and overfill protection devices are in place and operational.

(2) **Leak detection on tanks.** Fuel specialists must check the condition of an owner or operator's selected method(s) of leak detection at a location. The requirements of each method listed below are offered as a general outline; a complete list of leak detection requirements is in ~~OAC 165:25 and 165:26, the Commission's Underground and Aboveground Storage Tank Rules, respectively~~Chapter 25 and Chapter 26 of Commission rules.

(A) **Vapor monitoring wells.** If vapor monitoring wells are an owner or operator's selected method of leak detection, the Fuel Specialist must ensure that the requirements listed below are met:

(i) Wells must be correctly installed and sufficient in number for the particular facility.

(ii) A monitoring well site assessment must be completed with documentation of Commission acceptance kept on site for review.

(iii) Wells must be properly monitored and the results recorded every 30 days on the appropriate OCC form.

(iv) Any single vapor monitoring well reading above 4,000 units/ppm for gasoline and 1,500 units/ppm for diesel fuel should have been reported to a Commission hydrologist by telephone at (405) 521-6575 within 24 hours of the owner or operator or any of his or her employees at the facility knowing the reading. If gasoline and diesel tanks are in the same tankpit, any reading above 1,500 units/ppm should have been reported. If this has not been reported, the Fuel Specialist shall report it.

(B) **Groundwater monitoring wells.** The Fuel Specialist must ensure, if groundwater monitoring wells are an owner or operator's method of leak detection, that the requirements listed below are met:

(i) Wells must be correctly installed and sufficient in number for the particular facility.

(ii) A monitoring well site assessment must be completed with documentation of Commission acceptance kept on site for review.

(iii) Wells must be properly monitored and the results recorded every 30 days on the appropriate OCC form.

(iv) Any indication of product discovered should have been reported to a Commission hydrologist by telephone at (405) 521-6575 within 24 hours of the owner or operator or any of his or her employees at the facility knowing of its presence. If this has not been reported, the Fuel Specialist shall report it.

(C) **Tank system tightness testing with monthly inventory control.** When performed in accordance with the following requirements, this combination of functions is a stand-alone method of leak detection for tanks. This method expires ten (10) years after the corrosion protection upgrade of your tank(s) to 1998 standards or ten (10) years after a new tank is installed.

(i) **Tank tightness testing.** Tank tightness testing (or another test of equivalent performance) must be capable of detecting a 0.1 gallon per hour leak rate from any portion of the tank while accounting for the effects of thermal expansion or contraction of the product, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table. The test must be performed by a tester certified by the manufacturer of the testing equipment, and completed once every five years.

(ii) **Inventory control.**

(I) Product inventory control (or another test of equivalent performance) must be conducted monthly to detect a release of at least 1.0 percent of flow-through plus 130 gallons on a monthly basis.

(II) Inventory volume measurements for regulated substance inputs, withdrawals, and the amount remaining in the tank are recorded each operating day.

(III) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth inch (1/8").

(IV) The regulated substance inputs are reconciled with delivery receipts by measurement

of the tank inventory volume before and after delivery.

(V) Deliveries are made through a drop tube that extends to within 6 inches (6") of the tank bottom.

(VI) Product dispensing is metered and recorded within an accuracy of 6 cubic inches for every 5 gallons of product withdrawn.

(VII) The measurement of any water level in the bottom of the tank is made to the nearest one-eighth inch (1/8") at least once a month.

(VIII) Use of OCC Monthly Inventory Reconciliation Form or an electric equivalent is required.

(D) **Statistical Inventory Reconciliation (SIR).**

(i) Deliveries, withdrawals and balance remaining must be recorded each operating day. Product deliveries must be reconciled with an appropriate device, and data must be reconciled monthly.

(ii) The tank must be equipped with a drop tube and measured for water at least monthly.

(iii) Records must be submitted to a certified SIR vendor for monthly evaluation.

(iv) Results of monthly SIR analysis must be on premises no later than the last day of the following month.

(E) **Automatic tank gauging (ATG).**

(i) The ATG must be in operating condition. It must perform a monthly test capable of detecting a 0.1 or 0.2 gallons per hour (gph) leak rate; and if the system detects a 0.2 gph leak rate, monthly inventory reconciliation must be completed in conjunction with it.

(ii) If the Fuel Specialist has concerns about the operation of the system, they may require notice and be present when an authorized person is printing relevant reports from the ATG.

(F) **Manual tank gauging.** If manual tank gauging is the selected form of release detection Fuel Specialists must determine that the test duration is appropriate, and that tank tightness testing is performed in conjunction with manual tank gauging in accordance with ~~OAC 165:25 or 165:26~~Chapter 25 or Chapter 26 of Commission rules. Manual tank gauging is only accepted as a method of leak detection on tanks with a capacity of up to 2,000 gallons.

(G) **Interstitial monitoring.** Sampling or testing must be capable of detecting a release monthly in accordance with the ~~manufacturers~~manufacturer's instructions.

(H) **Other methods.** If a method of leak detection other than those listed in this Chapter is used, it must be approved by the Commission and checked by the Fuel Specialist.

(3) **Leak detection on pressurized lines.** The Fuel Specialist must check for leak detection on pressurized piping. A complete list of requirements is in ~~OAC 165:25 and 165:26~~Chapter 25 and Chapter 26 of Commission rules. All pressurized piping must have electronic/automatic or mechanical line leak detectors capable of detecting a three gallons per hour leak. New installations and facilities replacing a piping system must have double-walled piping. An annual line tightness test is required unless the alternative criteria listed in (C) below are met.

(A) **Electronic/automatic and mechanical line leak detectors; sump sensors, floats and similar mechanical devices.**

(i) Automatic electronic or mechanical line leak detectors must be installed on all pressurized lines. Double-walled piping systems must have dispenser and tank sumps with a sensor, float or similar mechanical device installed at each submersible pump or at the lowest sump at the lowest island for each tank, whichever is at the lowest end of the piping gradient.

(ii) The line leak detectors, floats and other devices must be tested annually according to manufacturer's specifications.

(B) **Annual line tightness testing.** An annual line tightness test, either hydrostatic or electronic, must be performed unless the requirements of (C) below are met.

(C) **Alternative to line tightness testing.** A certified electronic line leak detector may be used in lieu of an automatic mechanical line leak detector and annual tightness test only if:

(i) The system is capable of detecting and tests for a leak of 3 gallons per hour before or after each operation of the submersible turbine pump; and

(ii) The system is capable of detecting and tests for a leak of 0.2 gallons per hour at least once every month; and

(iii) The system is capable of detecting and tests for a leak of 0.1 gallons per hour annually, and the system is tested annually in accordance with manufacturer's specifications.

(D) **Vapor monitoring wells.** If vapor monitoring wells are an owner or operator's selected method of leak detection, the Fuel Specialist must ensure that the requirements listed below are met:

(i) There must be a sufficient number of wells limited to a 20-foot radius around the lines, and the wells must be properly marked and secured.

(ii) Wells must be correctly installed, and the OCC approved monitoring well site assessment must be made available to the Fuel Specialist.

(iii) Wells must be properly monitored and the results recorded every 30 days.

(E) **Interstitial monitoring.**

(i) All double-walled piping must be sloped to allow a leak to flow to the sump at the tank or dispensers.

(ii) Containment sumps connected to product piping must be equipped with at least one sump sensor at the lowest end of the piping gradient.

(iii) Sump sensors must detect any liquid or leaking petroleum product in accordance with the manufacturer's specifications.

(4) **Suction piping.** A line tightness test must be performed every 3 years according to manufacturer's specifications unless one of the line leak detection methods listed above is used, or unless it is safe suction piping that meets the specifications of (5) below.

(5) **Safe suction piping.** No annual line tightness test and no leak detection method is required if piping meets these specifications: below-grade piping must operate under vacuum, be sloped to allow product to drain back into the tank, and have only one check valve installed on each line directly below the pump. Compliance with these standards must be readily determined by the Fuel Specialist.

(6) **Cathodic protection.** The Fuel Specialist must ensure that cathodic protection is installed and in proper working order for all metal tanks and piping that routinely contain regulated substances or product and are in contact with the ground. Cathodic protection can be an impressed current or galvanic system with these requirements:

(A) A site map and anode information should be made available to the Fuel Specialist and all tanks and lines must be protected.

(B) Continuity tests must be conducted, and the soil-to-structure potential must be at least -0.85 volts.

(C) Rectifier and cathodic protection tests must be performed by a qualified cathodic protection tester once every three years.

(D) Rectifier readings on impressed current systems must be recorded at least every 60 days and kept on site for review.

165:15-3-21.1. Leak detection and cathodic protection records

(a) Records for the preceding 12 months must be maintained at the facility and readily available to the Fuel Specialist ~~for the preceding 12 months~~.

(b) Records must be maintained on forms specified by the Commission.

165:15-3-22. Equipment installation

Fuel Specialists must ensure that tanks and ancillary equipment are installed properly and conform to Commission standards. These standards apply to all facilities. Requirements are listed in detail in ~~OAC 165:25 and 165:26~~Chapter 25 and Chapter 26 of Commission rules.

(1) **Unattended self-service stations.**

(A) Operating instructions must be conspicuously posted.

(B) There must be a properly placed emergency shutoff device and conspicuously posted emergency instructions. A telephone or other approved means of communication to notify the fire department.

(2) **Emergency pressure release venting.** Aboveground storage tanks must have some form of construction or device that will relieve excessive internal pressure caused by exposure to fires, and have some form of emergency pressure venting. This applies to all compartments and interstitial spaces of tanks, and any enclosed spaces around tanks that can contain liquid.

(3) **Release vent construction.** An aboveground tank must have some form of pressure-relieving construction to appropriately control and direct a tank rupture. The tank owner or operator must present, upon request, evidence certifying the construction if the owner has the information.

(4) **Venting and venting specifications.** The Fuel Specialist will ensure that vent piping size, height, width, placement and construction meet approved standards, vent vapors upward and do not present collision or fire hazards.

(5) **Piping requirements.** The Fuel Specialist must ensure piping is appropriately constructed and protected from physical damage and corrosion where appropriate. Appropriate valves must be in place in piping to prevent leaks and fires. Aboveground storage tank piping and associated parts such as flanges and bolts must be constructed to resist fire to the appropriate extent.

(A) All new aboveground or underground piping must be installed in accordance with requirements of either Chapter 25 or Chapter 26 ~~requirements~~of Commission rules.

(B) Pressurized piping must have automatic line leak detectors with one sensor, float or similar mechanical device at each submersible pump, or at the lowest sump at the lowest island for each tank, whichever is at the lowest end of the piping gradient.

(6) **Equipment and materials.** All pipes, valves, couplings, faucets, flexible connectors, fittings and other pressure-containing parts must meet material specifications and pressure and temperature limitations, adhering to Commission standards. Underground equipment must be cathodically protected where appropriate and aboveground equipment must resist fire to the approved extent. Impact/shear valves and breakaway valves must be in place to prevent leaks and stop their flow in an emergency.

(7) **Electrical equipment.** All electrical equipment must meet the requirements NFPA 70, the National Electrical Code, as it applies to wet, damp and hazardous conditions. All electrical wiring and equipment must be suitable for the locations in which it is installed, and required emergency switches must be provided and appropriately placed.

(8) **Vault requirements.** Vaults are superior installation systems that are not required, but can be used above or below grade and must meet standards listed in ~~OAC~~ 165:26-2-71 of Commission rules. The Fuel Specialist will ensure that those standards are met.

(9) **Fill pipes.** Fill pipes must be properly installed and labeled, and overfill sump lids must be color-coded or properly labeled with permanent markings.

(10) **Collision barriers.** Aboveground storage tanks and all dispensers exposed to traffic must be resistant to damage from the impact of a motor vehicle or be protected

by suitable collision barriers. Secondary containment may serve as a collision barrier.

(11) **Fencing requirements.** All aboveground tanks must be enclosed by an appropriate security fence.

(12) **Spill Prevention Control and Countermeasure Plan.** Owners or operators of aboveground storage tanks must have a Spill Prevention Control and Countermeasure Plan (SPCC Plan) completed in strict accordance with the requirements of Environmental Protection Agency 40 CFR 112, and updated every five years. Each facility location must have its own plan.

(13) **Corrosion protection.** Any portion of a tank or its piping system that routinely contain regulated substances or product and in contact with the soil must be protected from corrosion by a properly engineered, installed and maintained cathodic protection system in accordance with recognized standards of design listed in ~~OAC~~ 165:26-3-80, 3-81, and 3-82 of Commission rules. A tank sitting on a concrete pad will be considered in contact with the soil unless it is insulated from the concrete by some dielectric material.

(14) **Storage tank spacing and buffer distances.**

(A) Aboveground storage tanks must be appropriately spaced; the Fuel Specialist will determine whether the spacing is in accordance with ~~OAC 165:26~~Chapter 26 of Commission rules.

(B) Minimum distances from aboveground storage tanks must also be maintained between tanks and the nearest important building on the same property, fuel dispensers, public ways, and property lines.

(15) **Secondary containment requirements for aboveground storage tanks.** Double-walled tanks do not require additional containment if conditions listed in OAC 165:26-2-31 are satisfied.

165:15-3-24.3. Farm inspections

In addition to the general requirements for all facilities, Fuel Specialists must inspect items particular to farm petroleum storage tank systems.

(1) **Leak detection.** Because the primary purpose of the Commission's regulation of farm tanks over 1,100 gallons is to prevent leaks, the farmer must select some form of leak detection. Any leak detection method referenced in ~~OAC 165:25~~Chapter 25 of Commission rules may be used. Fuel Specialists will check manual tank gauging records to ensure the monthly standards are not exceeded. If the standards are exceeded, there is most likely a leak in the tank which should have been reported to a Commission hydrologist at 405-521-6575 within 24 hours of the owner or any of his or her employees knowing the gauging results.

(2) **Cathodic protection.** The Fuel Specialist must ensure, for any metal tanks or piping, that cathodic protection is installed and in proper working order.

(3) **Electrical requirements.** Fuel Specialists will ensure that all electrical equipment meets the requirements of NFPA 70, the National Electrical Code, as it applies to wet, damp and hazardous conditions, or other approved local code, and is suitable for the locations in which it is installed.

SUBCHAPTER 7. SPECIFICATIONS, STANDARDS, AND LABELING FOR MOTOR FUELS

165:15-7-1. Applicability and general compliance

(a) **Compliance.** All motor fuel sold in the State of Oklahoma ~~and regulated by the Commission~~ must comply with the standards of this Subchapter ~~and with the National Institute of Standards and Technology (NIST) Handbook 130, "Uniform Engine Fuels and Automotive Lubricants Regulation," as adopted by the National Conference on Weights and Measures~~.

(b) **Removal from market.** Any motor fuel that does not meet the standards and specifications of the Commission must not be sold in Oklahoma.

165:15-7-2. Gasoline ~~and gasohol~~

(a) **Characteristics.** Gasoline ~~and gasohol~~ must be essentially free of undissolved water, sediment, and suspended matter, and must be suitable for use as a fuel in a spark ignition, internal combustion engine. It must be clear and bright at the ambient temperature or ~~70°F~~70°F, whichever is higher.

(b) **The minimum value for (R+M)/2 for unleaded motor fuel.** The minimum value for (R+M)/2 stated in this subsection applies to all unleaded fuel sold in the State of Oklahoma.

(1) The measuring devices must be labeled as follows and the motor fuel dispensed must meet or exceed the stated value corresponding to the stated grade. At a minimum, labeling of measuring devices for unleaded product grade must state as follows:

(A) West of 99 degrees west longitude, 86
(B) 87
(C) 88
(D) 89
(E) 90
(F) 91
(G) 92
(H) 93
(I) 94

(2) In addition to the labeling requirements of (1), labels may read as follows:

(A) East of 99 degrees west longitude

(i) Unlead or Unleaded or Unleaded Regular: 87 or 88

(ii) Unleaded Plus or Mid-Grade Unleaded or Mid-Grade UL: 89 or 90

(iii) Premium Unleaded or Super Unleaded or Premium UL or Super UL: 91 and above.

(B) West of 99 degrees west longitude

(i) Unlead or Unleaded or Unleaded Regular: 86 or 87

(ii) Unleaded Plus or Mid-Grade Unleaded or Mid-Grade UL: 88 or 89

(iii) Premium Unleaded or Super Unleaded or Premium UL or Super UL: 90 and above.

(3) Any labeling of measuring devices for grade(s) of products other than those described in (1) and (2) above require an application to the Director of the Petroleum Storage Tank Division.

(c) **Gum content.** The gum content of gasoline must not exceed 5 milligrams per 100 milliliters.

(d) **Additives.** Ethanol, MtBE or TAME added to gasoline as a component must not exceed concentrations permitted by the United States Environmental Protection Agency.

(e) **Other.** Any other type, grade, or mixture of gasoline ~~or gasohol~~ must be certified pursuant to the provisions of Subchapter 5 of this Chapter.

165:15-7-3. Kerosene

(a) Kerosene must be free from suspended water and sediment.

(b) Kerosene must have an API gravity of not less than 40.

(c) The flash point for kerosene must be ~~100?F~~100°F or greater.

(d) Kerosene labeled as "No. 1-K"must not exceed 0.04 percent sulfur by weight. All other kerosene must not exceed 0.3 percent sulfur by weight.

165:15-7-4. Aviation gasoline

Aviation gasoline must be free from suspended water and sediment and have an appropriate octane reading and color.

(1) **Octane rating.** There are three different ~~grades~~classifications of aviation gasoline:

(A) Grade 80-87. The lean octane rating must not be less than 80. The rich octane rating must not be less than 87.

(B) Grade 100-130. The lean octane rating must not be less than 100. The rich octane rating must not be less than 130.

(C) Grade 100-130LL. The lean octane rating must not be less than 100. The rich octane rating must not be less than 130.

(2) **Aviation gasoline color.**

(A) Grade 80-87 must have a red color.

(B) Grade 100-130 must have a green color.

(C) Grade 100-130LL must have a blue color.

165:15-7-5. Diesel fuel

The standard classification of diesel fuel oil, as described in ASTM D 975, must be used with the exceptions as noted in the following paragraphs:

(1) **Characteristics.** Diesel fuel must be a hydrocarbon fuel, essentially free from suspended water and sediment, and must be suitable for use as a fuel in a diesel engine.

(2) **Classification.** Diesel fuel is classed as follows:

(A) Grade No. 1-D. This fuel comprises the class of volatile fuel oils from kerosene to the intermediate distillates. Fuel within this classification is applicable for use in high-speed engines in service involving frequent and relatively wide variations in loads and speeds. This fuel is used where low fuel temperatures are encountered.

(B) Grade No. 2-D. This fuel covers the class of distillate gas oil of lower volatility. These fuels are applicable for use in high-speed engines in service involving relatively high loads and uniform speeds.

(3) **Flash point.** The following limits for flash point shall apply:

(A) 1-D minimum flash point of ~~120?F~~120°F using D 56.

(B) 2-D minimum flash point of ~~125?F~~125°F using D 56.

(4) **Distillation test.** The limits of the distillation test must be as specified in Appendix C of this Chapter.

(5) **Viscosity test.** The test used to determine the viscosity will be ASTM D 445. The limits at ~~104?F~~104°F, in centistrokes, must be as follows:

(A) For 1-D, the minimum kinematic viscosity is 1.3 and the maximum is 2.4.

(B) For 2-D, the minimum kinematic viscosity is 1.9 and the maximum is 4.1.

165:15-7-7. Aviation turbine fuel

(a) **Characteristics.** Aviation turbine fuel must be essentially free from suspended water and sediment, clear, straw-to amber-colored and suitable for use in an aviation turbine engine.

(b) **Classification.** Aviation turbine fuel is ~~classed~~classified as follows:

(1) **Jet A/A-1.** A relatively high flash point distillate of the kerosene type. Two grades of kerosene fuel that differ in freezing point. Other grades would be suitably identified.

(2) **Jet B.** A relatively wide boiling range volatile distillate.

SUBCHAPTER 9. DESCRIPTION OF MOTOR FUEL

165:15-9-3. ~~Alcohol, ethanol or ethyl alcohol~~Motor fuel sold at airports for fueling auxiliary support equipment

Motor fuel sold at airports for fueling ~~aircraft~~auxiliary airport support equipment must be labeled with the percent of alcohol in the fuel, if any. ~~At all other retail facilities the retailer may post on the dispenser or elsewhere on the premises any information regarding the fuel's additives which the retailer deems appropriate to inform customers.~~

SUBCHAPTER 15. LIQUID MEASURING DEVICES

PART 9. EQUIPMENT AND OPERATIONS

165:15-15-40. Maintenance of equipment

All liquid measuring equipment in service and all attached mechanisms and devices or those used in connection therewith must continuously be maintained in proper operating condition throughout the period of service of the equipment. Liquid measuring devices in service at a ~~place of business~~retail facility found to be in error predominately in a direction favorable to the measuring device owner or operator and near the tolerance limits are not considered to be maintained in a proper operating condition.

165:15-15-46. Discharge hose at retail facilities

(a) A liquid measuring device that is equipped with a flexible discharge hose must be of the wet-hose type with a shutoff valve at its outlet end. This valve must be a listed automatic type nozzle.

(b) The discharge hose must be adequately reinforced.

(c) At any installation where the normal flow of product may be stopped by a means other than by a hose nozzle valve, such as at pre-pay or self-service stations, the system must include listed equipment with a feature that requires the closing of the hose nozzle valve before product flow can be resumed or before the hose nozzle valve can be replaced in its normal position in the dispenser; otherwise, the hose nozzle valve must not have a latch-open device.

(d) All discharge hoses must have a breakaway valve.

PART 11. SPECIAL PERMITS [REVOKED]

165:15-15-65. Application for special permit [REVOKED]

~~Application may be made for an order establishing standards for any measuring device which does not fall within any classification established by this Subchapter. The application must be accompanied by a brochure describing in detail the way the device operates, the tests performed on the device, and its accuracy. A place must be provided where the device can be inspected and tested by a Fuel Specialist.~~

SUBCHAPTER 19. VIOLATIONS AND CONTEMPT

165:15-19-2. Enforcement procedure

In addition to the contempt procedures described in ~~the Oklahoma Corporation Commission's Rules of Practice, OAC 165:5~~Chapter 5 of Commission rules, the following procedure for violations may be followed:

(1) A Fuel Specialist may issue in the field a Complaint for Contempt for any violation or violations of the rules of this Chapter, and/or 17 O.S. §301 et seq., and/or 52 O.S. §321 et seq., and/or 83 O.S. §111 et seq., and amendments thereto.

(2) A copy of the Complaint for Contempt must be furnished to the owner or operator.

(3) The Complaint for Contempt must be in the form specified by the Commission.

(4) After the Complaint for Contempt is verified, it must be filed with the Court Clerk of the Oklahoma Corporation Commission, and a citation directed to the person against whom the complaint is made must be issued and served upon that person, setting the date for hearing on the complaint.

(5) Prior to the delivery by the Fuel Specialist of a Complaint for Contempt to an owner or operator, the approval of the Director of the Petroleum Storage Tank Division must be obtained.

165:15-19-3. Notices of Violation

(a) When a Petroleum Storage Tank Division Fuel Specialist finds a violation of any rule or order of the Commission regarding the regulation of petroleum storage tanks, the Fuel Specialist may issue a Notice of Violation (NOV).

(b) Each violation that can have an NOV issued is listed in ~~OAC~~ Chapter 25 and 26 of Commission rules,

(1) A Notice of Violation is to alert the tank owner or operator that a violation has been found. The NOV will describe the violation and act as a notification that a Warning or Fine Citation will be issued or further Commission enforcement action will occur if the violation is not corrected.

(2) There are some violations that are not eligible for a Warning Citation. For these violations, a Fine Citation will be issued to the tank owner or operator.

(3) In all situations where an NOV is issued, it must explain to the person to whom it is given what the offense is and how the person can correct it.

(c) A Notice of Violation will state the following information:

(1) A clear description of the violation(s).

(2) A date by which the violation(s) must be corrected.

(3) A date by which to request a hearing.

(4) The name of the Fuel Specialist issuing the NOV, along with a telephone number and address so that the tank owner or operator can ask the Fuel Specialist questions.

(d) A Fuel Specialist will give the NOV(s) to the owner or operator of the storage tank facility, if they are at the facility. If the owner or operator is not present, managers at the storage tank facility can be given NOVs, but the Commission must also mail a copy of the NOV to the owner or operator at the last known address shown by Commission records. The NOVs will be faxed rather than mailed at any company's request.

165:15-19-4. Re-inspection, Enforcement and Fine Citation

(a) After the date that the violation is to be corrected, a Fuel Specialist will re-inspect the storage tank facility to verify that the violation has been corrected.

(b) If the re-inspection shows that the violation has not been corrected, the Fuel Specialist will:

(1) Refer the violation to the Division's ~~Manager of Inspection and~~ Compliance and Inspection Manager for enforcement action; and/or

(2) If the storage tank facility constitutes an immediate hazard, it may be shut down pending a correction of the problem or a hearing on the issue.

165:15-19-5. Payment of fine or hearing

(a) The storage tank owner or operator can either pay the amount of the fine as stated in the Fine Citation or request an evidentiary hearing.

(b) The tank owner or operator will have thirty (30) days from the date the citation was issued to pay the fine.

(1) A fine may be paid with cash, a money order, or check. Any cash payment must be made at the Commission's cashier window. All checks must be made payable to the Oklahoma Corporation Commission - Petroleum Storage Tank Division. If sending payment through the mail, a copy of the citation must be sent with the payment to ensure proper credit.

(2) Payment of a fine within the 30-day timeframe will not be considered an agreement or disagreement with the citation.

(c) If the storage tank owner or operator disagrees with the citation, he or she can have a hearing at the Commission.

(1) To request a hearing, the procedure as provided on the citation should be followed and must be made within seven (7) days from the date the citation was issued.

(2) The Commission will set a date for a hearing and will notify the tank owner or operator of the date and time of the hearing.

(3) If found guilty at the hearing, the tank owner or operator must pay the amount of the fine, as well as an administrative cost of $250.00.

(d) If a Fine Citation has not been paid within ninety (90) days of being issued or within ninety (90) days of a Commission order confirming the fine, the amount of the fine will double. Refusal to comply with an order of the Commission may result in an additional fine to be set after notice and hearing in an amount as allowed by law.

(e) Failure of a tank owner or operator to appear at the hearing may result in additional enforcement actions. These actions may include the addition of a larger fine and/or assessment of an administrative fee and/or having the violation sent to the Office of General Counsel for legal proceedings.

(f) An appeal from the evidentiary hearing must be to the Commission en banc in accordance with ~~OAC 165:5~~Chapter 5 of Commission rules.

(g) A tank owner or operator is still responsible for following the Commission's rules regarding petroleum storage tanks regardless of paying a fine or correcting a violation.

[OAR Docket #15-439; filed 6-11-15]

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

[OAR Docket #15-445]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 17. Obligations Under the Oklahoma Underground Facilities Damage Prevention Act Subject to Commission Enforcement [NEW]
165:20-17-1. Scope [NEW]
165:20-17-2. Definitions [NEW]
165:20-17-3. Statutory citation [NEW]
165:20-17-4. Compliance with the Act required [NEW]
165:20-17-5. Emergencies [NEW]

AUTHORITY:
The Commission's statutory authority is found in Title 17 O.S. § 6.1; Title 17 O.S. § 152; Title 52 O.S. § 5; Title 52 O.S. § 47.3; Article IX, Sections 18 and 18a of the Oklahoma Constitution and OAC 165:5-1-7.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
n/a

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Approved by Governor's declaration on June 8, 2015

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n/a

INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
The adopted rules are a direct result of House Bill 2533 (2014) which was partially codified at Title 63 O.S. § 142.13. Non-codified language in the bill required the Corporation Commission to conduct a Notice of Inquiry ("NOI") to investigate particular areas of pipeline safety. Following the NOI and after public comment was received, it was determined that the adopted rules in this cause would be required to address the areas of the Oklahoma Underground Facilities Damage Prevention Act, Title 63 O.S. § 142.1 *et seq.*, that the Legislature had charged the Commission with enforcing.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 17. OBLIGATIONS UNDER THE OKLAHOMA UNDERGROUND FACILITIES DAMAGE PREVENTION ACT SUBJECT TO COMMISSION ENFORCEMENT

165:20-17-1. Scope

(a) This Subchapter applies to Commission enforcement pursuant to 63 O.S. § 142.13 of the Oklahoma Underground Facilities Damage Prevention Act, 63 O.S. §§ 142.1 et seq., with respect to those facilities described by the currently effective definition of "pipeline" in 49 C.F.R. § 192.3 and "pipeline" and "pipeline system" in 49 C.F.R. § 195.2. This Subchapter does not apply to any other underground facility, except to the extent it may qualify as a "pipeline" or "pipeline system" under the referenced regulations.

(b) This Subchapter shall not be construed as limiting the Commission's authority to grant an exception, for good cause shown, to any rule contained in this Subchapter unless otherwise precluded by law.

(c) Nothing in this Subchapter shall be construed to modify or limit any private right of action arising under the Oklahoma Underground Facilities Damage Prevention Act and enforceable in the district courts of this State.

165:20-17-2. Definitions

In addition to terms defined in 63 O.S. § 142.2, the following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Act" means the Oklahoma Underground Facilities Damage Prevention Act, 63 O.S. §§ 142.1 et seq.

"Pipeline" means "pipeline" as defined in 49 C.F.R. § 192.3 and 49 C.F.R. § 195.2.

"Pipeline system" means "pipeline system" as defined in 49 C.F.R. § 195.2.

165:20-17-3. Statutory citation

Citations to the Act, 49 C.F.R. § 192.3 and 49 C.F.R. § 195.2 in this Subchapter refer to the most recent codifications of the Act and such sections of the Code of Federal Regulations.

165:20-17-4. Compliance with the Act required

(a) Compliance with the provisions of the Act applicable to a pipeline or pipeline system is required.

(b) The Commission may enforce any violation of the Act against any person to the extent:

(1) the violation occurs with respect to a pipeline or pipeline system; and

(2) the person against whom enforcement action is taken is subject to the provisions of the Act, including without limitation operators and excavators.

165:20-17-5. Emergencies

An excavator shall immediately call the local 911 emergency telephone number and report any incident that results in an unintentional and uncontrolled release of flammable, toxic or corrosive gas or liquid from a pipeline or pipeline system. In this context, intentional acts refer to operator maintenance or repairs and not vandalism or other similar acts.

[OAR Docket #15-445; filed 6-11-15]

TITLE 165. CORPORATION COMMISSION CHAPTER 25. UNDERGROUND STORAGE TANKS

[OAR Docket #15-440]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions
Part 3. Definitions
165:25-1-11. Definitions [AMENDED]
Part 5. Scope of Rules
165:25-1-21. Overview of applicability and enforcement [AMENDED]
165:25-1-23.1. Specified applications [AMENDED]
165:25-1-24.1. Citation of rules [AMENDED]
Part 6. Administrative Provisions
165:25-1-26.1. Hearings, orders and appeals [AMENDED]
165:25-1-29. Notices [REVOKED]
Part 9. Notification and Reporting Requirements
165:25-1-41. General reporting requirements [AMENDED]
165:25-1-42. New tank systems [AMENDED]
165:25-1-48. Tank and line tightness testing [AMENDED]
Part 13. Fees
165:25-1-64. Fees [AMENDED]
Part 15. Shutdown of Operations
165:25-1-67. Shutdown of operations [AMENDED]
Part 17. Licensing Procedures
165:25-1-103. Licensing procedure for ~~Observation~~Monitor Well Technician [AMENDED]
165:25-1-107. License ~~suspension or revocation~~penalties [AMENDED]
Part 19. Operator Training
165:25-1-124. Frequency and proof of training [AMENDED]
Subchapter 2. General Requirements for Underground Storage Tank Systems
Part 1. Codes and Standards
165:25-2-2. Incorporated codes and standards [AMENDED]
Part 3. Design and Installation
165:25-2-31. Underground storage tank installation [AMENDED]
165:25-2-33. Approved tanks, tank design [AMENDED]
165:25-2-35. Pre-installation [AMENDED]
165:25-2-36. Tank system installation [AMENDED]
165:25-2-38. Fill pipe requirements [AMENDED]
165:25-2-39. Spill and overfill protection [AMENDED]
Part 5. Protection Against Corrosion
165:25-2-51. Corrosion protection [AMENDED]
165:25-2-53.1. Underground storage tank internal lining requirements [AMENDED]
Part 6. Piping
165:25-2-55.1. Underground storage tank piping materials [AMENDED]
165:25-2-55.2. Vent piping requirements [AMENDED]
Part 7. Dispensers
165:25-2-75. Required signs [AMENDED]
Part 11. Repairs to Underground Storage Tank Systems
165:25-2-111. Repairs to underground storage tank systems [AMENDED]
Part 13. Removal and Closure of Underground Storage Tank Systems
165:25-2-131. Tank removal and closure [AMENDED]
165:25-2-135. Permanent closure [AMENDED]
165:25-2-136. Assessing the site at closure or change in service [AMENDED]
165:25-2-137. Applicability to previously closed underground storage tank systems [AMENDED]
Subchapter 3. Release Prevention and Detection Requirements
Part 2. Release Detection Requirements and Methods
165:25-3-6.28. Statistical Inventory Reconciliation (SIR) [AMENDED]
165:25-3-6.29. Monitoring requirements for piping [AMENDED]

165:25-3-7. Release reporting [AMENDED AND RENUMBERED TO 165:25-3-7.1]
Part 3. Release Investigation Requirements
165:25-3-7.1. Release reporting [NEW]
165:25-3-8. Release investigation and confirmation [AMENDED]
Part 15. Corrective Action Requirements
165:25-3-70. Corrective action [AMENDED]
Subchapter 14. Special Requirements for Underground Storage Tank Systems Utilized by Bulk Plant Facilities
Part 1. General Application and Compliance Provisions
165:25-14-1. Application [AMENDED]
Subchapter 18. Inspections, Notices of Violation, and Citations
Part 3. Notices of Violation and Citations
165:25-18-13. Payment of fine or hearing [AMENDED]

AUTHORITY:
The Commission's statutory authority is found in 17 O.S. §§ 306, 307, 321.

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Approved by Governor's declaration on June 8, 2015

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INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
The evolution of underground storage tank regulation and use present new problems including meeting EPA requirements (Emergency Generator Tank regulation); impermissible activities; and defining limits on what underground storage tanks the Commission regulates. Past rulemakings have overlooked some elements of legislation that needed to be addressed; certain vocabulary/punctuation/statutory/regulatory citations refined. Experience has shown that certain rules need to be clarified to fully set forth achievable time frames for submitting required documents. Codes and standards incorporated in the underground storage tank rules need to be updated to reflect current editions. Experience also brings practical and uniform regulation where none previously existed, i.e. excavation of underground lines below 18 inches; require class A and B operator training recertification every 3 years.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 1. GENERAL PROVISIONS

PART 3. DEFINITIONS

165:25-1-11. Definitions

In addition to the terms defined in 17 O.S. § 303, the following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:

"Agent" means a person authorized by another to act on their behalf, either out of employment or contract.

"Airport" means landing facility for aircraft that are routinely available for public use (whether routinely used or not). Airports as used in this Chapter do not include private airstrips or private airports.

"ATG" means automatic tank gauge.

"Ball float functionality" means the ball float is operational as designed.

"BTEX" means benzene, toluene, ethylbenzene and xylene.

"Bulk plant" means a petroleum storage tank facility where gasoline, aviation fuel, diesel and/or volatile blending materials used in motor fuels, like kerosene and ethanol, are received by tank vessels, tank cars or tank vehicles and are stored or blended in mass quantities or bulk for the purpose of distribution by a tank vessel, tank car, tank vehicle, portable tank or other container, for wholesale or retail sale.

"Cathodic protection" means a technique designed to prevent the corrosion of a metal surface by making that surface the cathode of an electrochemical cell.

"Commission" means the Oklahoma Corporation Commission (OCC) and includes its designated agents or representatives.

"Construction tank" means a fuel tank used for twelve months or less at a construction site.

"Division" means the Petroleum Storage Tank Division (PSTD) of the Corporation Commission.

"EPA" means the United States Environmental Protection Agency.

"Farm tank" is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. "Farm" includes but is not limited to fish hatcheries, rangeland, and nurseries with growing operations.

"Fleet and Commercial" means any facility as defined in this Chapter that uses underground storage tanks to store regulated substances for use in its own vehicles or equipment. ~~This definition extends to facilities that provide oil change and lube services to consumers.~~

"Flow-through process tank" means a tank that forms an integral part of a production process through which there is a steady, variable, recurring or intermittent flow of material during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction to the process or for the storage of finished products or by-products from the production process.

"Licensed Environmental Consultant" means an individual who has a current license issued by PSTD to perform corrective action.

"Marina" means any fuel storage ~~facility~~tank system located on or by the water for the purpose of fueling watercraft.

"Out of Order tag" means tag, device or mechanism on the tank fill pipe that clearly identifies an underground storage tank as ineligible for delivery of product.

"Permanent out of use" or "POU" means a petroleum storage tank system that is not in service/use, does not contain regulated substances, and is not intended to be placed back in service/use.

"Private airport" means an airport used only by its owner and regulated as a fleet and commercial facility.

"Private airstrip" means a personal residential takeoff and landing facility part of the airstrip owner's residential property.

"PST" means petroleum storage tank.

"PSTD" means Petroleum Storage Tank Division.

"Public Utility" means any entity providing gas, electricity, water, or telecommunications services for public use.

"Regulated substance" means antifreeze, motor oil, motor fuel, gasoline, kerosene, diesel or aviation fuel. It does not include compressed natural gas.

"Release detection" means determining whether a release of regulated substances has occurred from a petroleum storage tank or system into the environment or into the interstitial area between the underground storage tank system and its secondary barrier.

"Residential tank" is a tank located on property used primarily for dwelling purposes.

"Retail facility" means a service station, convenience store or any other facility selling motor fuel that is open to the general public.

"Secondary containment" means an underground storage tank and/or piping with inner and outer barriers which provide a space for interstitial (the space between the inner and outer walls of a double walled tank or piping) monitoring.

"Tampering" means willful intention which makes an attempt to deceive, cheat or misrepresent the facts to the public. It also presents a risk to environmental welfare as well as public health, safety and welfare.

"Tank tightness testing" or **"precision testing"** means a procedure for testing an underground storage tank system's ~~ability to prevent an inadvertent release of any stored regulated substances into the environment~~integrity.

"Temporary ~~closure~~out of use" or "TOU" means the status of an underground storage tank system that has been taken out of ~~service~~service/use but not removed with the intent to return to service.

"TPH" means total petroleum hydrocarbons.

"Underground storage tank" or **"UST "** or **"tank"** means a regulated storage tank that has ten percent or more of its volume beneath the surface of the ground.

"Underground storage tank system" means an underground storage tank and any connected aboveground or underground piping, dispensers, and ancillary equipment or transport truck connected to the storage tank system.

"Used Motor Oil" is any spent oil removed from a motor vehicle.

PART 5. SCOPE OF RULES

165:25-1-21. Overview of applicability and enforcement

This Chapter applies to owners,~~and~~ operators, their employees and agents of all underground storage tank systems for which the Commission has been given regulatory responsibility by 27A O.S. (Supp. 1999) § 1-3-101 (E) (5) (b) and 17 O.S. § 301 et seq.

165:25-1-23.1. Specified applications

The following classes of underground storage tanks or systems are subject to specific regulations of this Chapter as follows:

(1) Airport hydrant fuel distribution systems are subject to release reporting, investigation, response and corrective action requirements only.

(2) Emergency power generator ~~tanks~~tank owners and operators are ~~not~~ subject to ~~release detection requirements; owners and operators of these systems must comply with~~ all ~~other~~ requirements of this Chapter.

165:25-1-24.1. Citation of rules

This Chapter will be known as the Oklahoma Corporation Commission's Rules and Regulations Governing Underground Storage Tanks and is to be cited as ~~OAC 165:25~~Chapter 25 of Commission rules.

PART 6. ADMINISTRATIVE PROVISIONS

165:25-1-26.1. Hearings, orders and appeals

(a) The Commission will issue orders as necessary to enforce the provisions of this Chapter to protect property, the public health and safety and the environment.

(b) Hearings to enforce or appeal enforcement of the provisions of this Chapter will be done in accordance with ~~the Commission's Rules of Practice, OAC 165:5~~Chapter 5 of Commission rules.

165:25-1-29. Notices [REVOKED]

~~Notices, applications and reports may submitted by fax or sent to: Oklahoma Corporation Commission, Petroleum Storage Tank Division, Jim Thorpe Office Building, Room 241, P.O. Box 52000, Oklahoma City, Oklahoma 73152-2000, (405) 521-4683, or toll free at 1-888-621-5878, fax number (405) 521-4945.~~

PART 9. NOTIFICATION AND REPORTING REQUIREMENTS

165:25-1-41. General reporting requirements

PSTD may require owners or operators of underground storage tank systems to provide information it deems necessary for the protection of human health, safety, property and the environment. Use of the designated ~~OCC~~PSTD form(s) is

required for scheduling, tank registration, change in ownership, monthly release detection, testing, temporary change in service, permanent closure, or return to service. These forms are available at the OCC website, PSTD webpage: www.occeweb.com, follow link to Petroleum Storage Tank Division and link to PSTD Compliance Forms.

165:25-1-42. New tank systems

(a) Persons intending to install a new underground storage tank and/or new underground piping must give PSTD notification of the installation at least 24 hours before the tank and/or lines are to be installed by submitting the ~~OCC~~PSTD scheduling notification form and receiving confirmation of the installation from PSTD. If events require a change in the date of installation, PSTD shall be given 48 hours notice of the new date. Any removal associated with replacement of tanks or lines requires at least 14 day notification prior to the removal activity.

(b) Upon receipt of the scheduling form an authorization letter giving temporary approval to receive fuel into an un-permitted tank will be sent to the owner. This letter will expire 90 days after the date of issuance. After the tank installation is complete, the ~~OCC~~PSTD registration form must be submitted to PSTD with copies of required installation testing, photographs of the tank and piping system components before they are covered, an as-built drawing of the entire tank system, and manufacturer installation checklists within 30 days. The registration form must be approved and tank fees paid in order to receive a tank permit. No regulated storage tank system can be operated without a valid permit from the Corporation Commission.

(c) Owners and Commission-licensed UST Installers must certify on the registration form that the installation of tanks and piping meet the requirements of this Chapter.

~~(d) If observation wells are the selected method of leak detection, the plans for their placement must be pre-approved by PSTD.~~

165:25-1-48. Tank and line tightness testing

(a) Tank and line tightness testing results in which any part of the tank system tested does not pass must be reported to ~~the OCC~~PSTD within 24 hours by the owner, operator, their employees or agents, and also independently by the person or company performing the test. Complete test results must be submitted within 7 days of testing.

(b) Tank tests must include both the wetted portion and ullage portion of the tank.

(c) Hydrostatic line tightness tests and line leak detector tests must be conducted in accordance with and reported on the prescribed PSTD form.

(d) The tester performing line and leak detector tests must also certify that the line leak detector is installed properly.

(e) All personnel performing tank and line testing must have the required education, experience, knowledge and competence to correctly perform testing services in accordance with the testing equipment, manufacturer certification and applicable industry standards or codes.

(f) Tank and line tightness testing must be scheduled by submitting the PSTD scheduling form and PSTD staff may be present.

PART 13. FEES

165:25-1-64. Fees

This Chapter requires the following ~~persons to pay~~ fees according to the schedule set out in ~~165:5-3-2~~Chapter 5 of Commission rules:

(1) Owners or operators of all underground storage tank systems in use during the fiscal year.

(2) Licensed UST Installers, UST Removers, Environmental Consultants, and ~~Observation~~Monitor Well Technicians who become licensed pursuant to the provisions of this Chapter.

PART 15. SHUTDOWN OF OPERATIONS

165:25-1-67. Shutdown of operations

(a) ~~The~~ PSTD may close (shut down) a UST system:

(1) If the system poses an imminent threat to health, safety, or the environment.

(2) If the owner or operator is operating tanks for which permit fees have not been paid.

(3) If the owner or operator fails to comply with a Commission order.

(4) For failure to properly install, operate and/or maintain leak detection, spill, overfill, or corrosion equipment if the owner/operator has been issued a written notice of violation and has failed to take corrective action.

(5) Failure to protect a buried metal flexible connector from corrosion if the owner/operator has been issued a written notice of violation and has failed to take corrective action.

(6) Failure to perform, maintain, have readily available or present records for the previous twelve (12) months.

(7) Failure to have a Class A, B, or C operator on premises during business hours.

(8) Tampering with equipment.

(b) ~~The~~ PSTD must close (shut down) a UST system:

(1) If required spill prevention equipment is not installed.

(2) If required overfill protection equipment is not installed.

(3) If required leak detection equipment is not installed.

(4) If required corrosion equipment is not installed.

(5) If 2" or more of water is found in the tank where conventional gasoline or diesel fuel is stored and if 1/2" or more of water is found in the tank of gasoline blended with alcohols, E85 fuel ethanol, or diesel blended with biodiesel.

(6) If a meter is found to be off in calibration by more than -15 cubic inches per every 5 gallons.

(c) Only PSTD designated employees have the authority to lock or seal dispensers and/or fill pipes of any UST system

violating subsection (a) or (b) of this Section. The PSTD employee must explain to the owner or operator the reason the UST system is being locked or sealed.

(d) The PSTD "Out of Order" tag attached to each fill pipe of the tank(s) in violation shall serve to clearly identify the tank(s) as ineligible for delivery, deposit, or acceptance of product. Tank owners/operators and product deliverers are responsible for ensuring that product is not delivered into the tagged tank(s).

(e) Owners, operators, or any persons who remove a lock or seal without permission from PSTD will be subject to penalties imposed by this Chapter, or formal enforcement proceedings.

(f) Upon confirmation that the UST system no longer poses an imminent threat to health, safety, or the environment, permit fees paid, violation(s) corrected, or Commission order requirements satisfied, the authority to remove a lock or seal by the owner or operator may be obtained as follows:

(1) ~~Verbal or written~~Written permission from the PSTD employee who placed the lock or seal on the device; or

(2) Verbal or written permission from the Manager of Compliance and Inspection; or

(3) Application to and order of the Commission.

(g) If a facility is closed under the provisions of this Section, the owner or operator of the facility will be afforded a hearing within ten (10) days of receipt by PSTD of the owner's or operator's application for a hearing.

PART 17. LICENSING PROCEDURES

165:25-1-103. Licensing procedure for ~~Observation~~Monitor Well Technician

(a) Monitoring of vapor and groundwater wells for the purpose of monthly release detection must be performed by an individual licensed by PSTD. An individual who applies to become a licensed Well Technician must:

(1) Complete the OCC application form.

(2) Demonstrate his/her competence in the use of the monitoring equipment to PSTD. The use of new or different monitoring equipment will require the user to display his/her competence in the use of the new or different equipment.

(3) Certify that they will comply with all Commission rules and requirements.

(4) Fees must be paid in accordance with ~~165:5~~Chapter 5 of Commission rules.

(b) A Well Technician license for the purpose of monthly release detection must be renewed every two years.

(c) Individuals who are monitoring vapor and groundwater observation wells for monthly release detection purposes must report readings that exceed established levels in 165:25-3-6.23 or 165:25-3-6.24 to the owner or operator within 48 hours.

165:25-1-107. License ~~suspension or revocation~~penalties

(a) The PSTD has the responsibility to deny, suspend, refuse to renew or revoke the license, or reprimand any licensee who is found guilty of:

(1) The practice of any fraud or deceit in obtaining a license or in performing work pursuant to this Chapter.

(2) Any gross negligence, incompetence or misconduct in installation work performed pursuant to this Chapter.

(3) Knowingly making false statements or signing false statements, certificates or affidavits to the PSTD or to clients with the intention to induce payment.

(4) Aiding or assisting another person in violating any provision of this Chapter.

(5) Signing a verification statement for work performed pursuant to this Chapter that was not performed by the licensee.

(6) Engaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm a customer or the public.

(7) Failure to comply with this Chapter, Chapters 26, 27, 29, and the Oklahoma Petroleum Storage Tank Regulation Act (17 O.S. § 301 et seq.) Oklahoma Petroleum Storage Tank Release Indemnity Program will result in PSTD seeking a suspension and/or revocation of the license.

(8) Being under indictment or convicted of any criminal offense.

(9) Failure to submit required PSTD installation paperwork within 30 days.

(b) Prior to any license suspension, revocation, or refusal to renew, the Director of PSTD will have the matter investigated and a report made for his or her consideration. If the Director elects to proceed with suspension, revocation, or refusal to renew, a Notice of Intent will be mailed to the licensee. If the Director elects to pursue suspension, revocation, or refusal to renew, PSTD will schedule a hearing before an Administrative Law Judge and the licensee will be officially notified. The burden of clear and convincing proof of violations of this Chapter,~~or~~ applicable state law, or other rules, regulations or Commission orders rests upon the PSTD.

(c) This Section in no way exempts the licensee from having to meet other applicable requirements as set by state and federal statutes and regulations from other state and federal agencies.

(d) Any licensee in violation of state law, enabling statutes, PSTD rules and/or Commission orders may be subject to fines assessed by the Commission after notice and hearing.

PART 19. OPERATOR TRAINING

165:25-1-124. Frequency and proof of training

(a) Each operator class must obtain initial certification from a PSTD-approved training provider no later than July 1, 2011. A Class A or Class B operator may train a Class C operator.

(b) Class A and Class B operators must be trained within 30 days after assuming operation and maintenance responsibilities for an underground storage tank system. Class C operators must be trained before assuming responsibility for responding to emergencies.

(c) Class A and Class B operators must be recertified every 3 years.

(~~c~~d) Class B operators must be ~~retrained~~recertified within 30 days in any areas (e.g. spill, overfill, corrosion protection) that are determined to be out of compliance with EPA and PSTD requirements for release prevention and/or release detection.
(~~d~~e) Owners or operators must provide PSTD with documentation for all operator classes.

SUBCHAPTER 2. GENERAL REQUIREMENTS FOR UNDERGROUND STORAGE TANK SYSTEMS

PART 1. CODES AND STANDARDS

165:25-2-2. Incorporated codes and standards

Specific references to documents are made in this Chapter. Each of these documents or part thereof is included by reference as a standard. New editions of codes and standards supersede all previous editions. Commission rules will ~~supercede~~supersede in all conflicts between PSTD rules and any industry standard. These codes and standards will be updated periodically through a formal rulemaking procedure initiated by PSTD to reflect any substantive or relevant changes.

(1) National Fire Protection Association Standards:

~~(A) Standard Number 30, 2003, "Flammable and Combustible Liquids Code".~~

(A) Standard Number 30, 2015, "Flammable and Combustible Liquids Code".

~~(B) Standard Number 329, 1992, "Underground Leakage of Flammable and Combustible Liquids".~~

(B) Standard Number 329, 2010, "Underground Leakage of Flammable and Combustible Liquids".

~~(C) Standard Number 385, 1990, "Tank Vehicles for Flammable and Combustible Liquids".~~

(C) Standard Number 385, 2012, "Tank Vehicles for Flammable and Combustible Liquids".

(D) Standard Number 321, 1991, "Basic Classification of Flammable and Combustible Liquids".

(E) Standard Number 327, 1993, "Cleaning or Safeguarding Small Tanks and Containers".

~~(F) Standard Number 30A,2003, "Automotive and Marine Service Station Code".~~

(F) Standard Number 30A, 2015, "Motor Fuel Dispensing Facilities and Repair Garages".

(2) American Petroleum Institute Standards

~~(A) Recommended Practice 1615, 1996, "Installation of Underground Petroleum Storage Systems"~~

(A) Recommended Practice 1615, 2011, "Installation of Underground Hazardous Substances or Petroleum Storage Systems, Sixth Edition".

~~(B) Recommended Practice 1632, 1996, "Cathodic Protection of Underground Storage Tank and Piping Systems"~~

(B) Recommended Practice 1632, 2002, "Cathodic Protection of Underground Storage Tank and Piping Systems".

~~(C) Recommended Practice 1604, 1987, "Removal and Disposal of Used Underground Service Station Tanks"~~

(C) Recommended Practice 1604, (R2010), "Closure of Underground Petroleum Storage Tanks, Third Edition".

~~(D) Recommended Practice 1631, 1992, "Interior Lining of Underground Storage Tanks"~~

(D) Recommended Practice 1631, 2001, "Interior Lining and Periodic Inspection of Underground Storage Tanks".

~~(E) Recommended Practice 1621, 1993, "Bulk Liquid Stock Control at Retail Outlets".~~

(E) Recommended Practice 1621, (R2001), "Bulk Liquid Stock Control at Retail Outlets".

~~(F) Recommended Practice 1626, 1993, "Storing and Handling Ethanol and Gasoline - Ethanol Blends at Distribution Terminals and Service Stations"~~

(F) Recommended Practice 1626, 2010, "Storing and Handling Ethanol and Gasoline - Ethanol Blends at Distribution Terminals and Service Stations".

(G) Recommended Practice 1627, 1993, "Storing and Handling of Gasoline - Methanol/Cosolvent Blends at Distribution Terminals and Service Stations".

(H) Publication 1628, 1996, "A Guide to the Assessment and Remediation of Underground Petroleum Releases".

~~(I) Publication 2200, 1994, "Repairing Crude Oil, Liquified Petroleum Gas, and Product Pipelines".~~

(I) Publication 2200, 2010, "Repairing Crude Oil, Liquified Petroleum Gas, and Product Pipelines, Fourth Edition".

~~(J) Publication 2015, 1994, "Cleaning Petroleum Storage Tanks"~~

(J) Publication 2015, 2001, "Requirements for Safe Entry and Cleaning of Petroleum Storage Tanks".

~~(K) Recommended Practice 1637, "Using the API Color Symbol System to Mark Equipment and Vehicles for Product Identification at Gasoline Dispensing Facilities and Distribution Terminals".~~

(K) Recommended Practice 1637, (R2012), "Using the API Color Symbol System to Mark Equipment and Vehicles for Product Identification at Gasoline Dispensing Facilities and Distribution Terminals, Third Edition".

(3) National Association of Corrosion Engineers:

~~(A) Standard Number RP 0169 92, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems".~~

(A) Standard Number SP0169-2013, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems".

(B) Standard Number RP-0184-94, "Repair of Lining Systems".

~~(C) Standard Number RP 0285-95, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems".~~

(C) Standard Number SP0285-2011, "External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection".

~~(D) Standard Number RP 0286-86, "The Electric Isolation of Cathodically Protected Pipelines".~~

(D) Standard Number SP0286-2007, "Electrical Isolation of Cathodically Protected Pipelines".

(4) Underwriter's Laboratory Standards:

~~(A) Standard UL58, 8th Edition, 1986, "Steel Underground Tanks for Flammable and Combustible Liquids".~~

(A) Standard UL58, 9th Edition, 1996, "Steel Underground Tanks for Flammable and Combustible Liquids".

~~(B) Standard UL1316, 2nd Edition, 1994, "Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products".~~

(B) Standard UL1316 Bulletin 2013, "Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohols, and Alcohol-Gasoline Mixtures".

~~(C) Standard UL1746, 2nd Edition, 1993, "External Corrosion Protection Systems for Steel Underground Storage Tanks".~~

(C) Standard UL1746 Bulletin 2013, "External Corrosion Protection Systems for Steel Underground Storage Tanks".

~~(D) Standard UL567, 7th Edition, 1992, "Pipe Connectors for Flammable and Combustible Liquids and LP Gas".~~

(D) Standard UL567 Bulletin-2012, "Emergency Breakaway Fittings, Swivel Connectors and Pipe-Connection Fittings for Petroleum Products and LP-Gas".

~~(E) Standard UL971, 2005 "Nonmetallic Underground Piping for Flammable Liquids".~~

(E) Standard UL971 Bulletin 2011, "Nonmetallic Underground Piping for Flammable Liquids".

(5) American Society for Testing Materials:

~~(A) Standard D 4021-92, "Standard Specifications for Glass Fiber Reinforced Polyester Underground Petroleum Storage Tanks".~~

(A) ASTM E1739-95 (2010) el, "Standard Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites".

~~(B) Standard ES 40-94 "Emergency Standard Practice for Alternative Procedures for the Assessment of Buried Steel Tanks Prior to the Addition of Cathodic Protection."~~

(B) ASTM G158-98 (2010), "Three Methods of Assessing Buried Steel Tanks".

~~(C) Standard E 1739-95, "Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites".~~

~~(D) Standard G 158-98, "Three Methods of Assessing Buried Steel Tanks".~~

(6) Petroleum Equipment Institute:

~~(A) RP 100, "Recommended Practices for Installation of Underground Liquid Storage Systems".~~

(A) PEI/RP 100 (2011 Edition) "Recommended Practices for Installation of Underground Liquid Storage Systems".

~~(B) RP 400-02, "Recommended Procedure for Testing Electrical Continuity of Fuel Dispensing Hardware".~~

(B) PEI/RP 400-02 (2012 Edition), "Recommended Practices for Inspection and Maintenance of Motor Fuel Dispensing Equipment".

~~(C) RP 500-05, "Recommended Practices for Inspection and Maintenance of Motor Fuel Dispensing Equipment".~~

(C) PEI/RP 500-05 (2011 Edition), "Recommended Practice for Inspection and Maintenance of Motor Fuel Dispensing Equipment".

~~(D) RP 900-07, "Recommended Practices for the Inspection and Maintenance of UST Systems".~~

(D) PEI/RP 900-07 (2008 Edition), "Recommended Practices for the Inspection and Maintenance of UST Systems".

(7) Steel Tank Institute:

(A) STIP3, "Specification and Manual for External Corrosion Protection of Underground Steel Storage Tanks".

(B) STI-R892-91, "Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems".

(C) STI-R894-91, "Specification for External Corrosion Protection of FRP Composite Underground Steel Storage Tanks".

~~(D) RP 972-01, "Recommended Practice For The Addition of Supplemental Anodes to STI-P3 USTs".~~

(D) RP-972-10, "Recommended Practice For The Addition of Supplemental Anodes to STI-P3 USTs".

(8) Association of Composite Tanks, ACT-100, "Specifications for the Fabrication of FRP Clad/Composite Underground Storage Tanks."

(9) Factory Mutual 1920, "Flexible Pipe Couplings."

(10) National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension, Existing Steel UST by Lining without Additional Cathodic Protection."

(11) National Groundwater Well Association, 1986, "RCRA Ground Water Monitoring Technical Enforcement Guidance Document (TEGD)".

(12) U.S. Environmental Protection Agency Office of Water, 1997, Drinking Water Advisory: "Consumer Acceptability Advice on Health Effects Analysis on Methyl Tertiary-Butyl Ether (MTBE)."

(13) Ken Wilcox Associates, Inc., First Edition: "Recommended Practice for Inspecting Buried Lined Steel Tanks Using a Video Camera."

PART 3. DESIGN AND INSTALLATION

165:25-2-31. Underground storage tank installation

All tanks, piping, and associated equipment used in conjunction with a UST installation shall be installed by personnel possessing appropriate skills, experience, and required PSTD license to complete the installation in accordance with recognized industry standards and this Chapter. A licensed UST installer must be present at all times during the installation. Photos of the installation of tank(s) and line(s) must accompany a completed registration form within 30 days of installation and tanks fees must be paid before a permit is issued.

165:25-2-33. Approved tanks, tank design

(a) Tanks must be properly designed and constructed, and any portion underground that routinely contains a regulated substance must be protected from corrosion as specified in referenced codes and standards. All new or replacements tanks except those excluded by regulation in this Chapter must be double wall or jacketed secondarily contained in construction to prevent the release of regulated substances to the environment during the operational life of the system. ~~Emergency power generator tanks excluded from release detection must also meet this requirement.~~

(1) Fiberglass-reinforced plastic tanks must conform to the standards contained in UL 1316 or ASTM D4021-86.

(2) Steel tanks clad with fiberglass-reinforced plastic must conform to the standards contained in UL 1746 or ACT-100.

(3) Tanks constructed of steel and cathodically protected must conform to the standards in UL 58, UL 1746 and NACE RP-0285 and must be protected in the following manner:

(A) The tank must be coated with a suitable dielectric material.

(B) Field-installed cathodic protection systems must be designed by a corrosion expert.

(C) Impressed current systems must be designed to allow determination of current operating status as required by this Chapter and manufacturer's specifications.

(D) Cathodic protection systems must be operated and maintained according to this Chapter and manufacturer's specifications.

(b) PSTD may permit alternative types of tank construction, design, and corrosion protection if the owner demonstrates to PSTD's satisfaction that the proposed system will prevent the release of any stored regulated substance to the environment during the operational life of the system.

(c) All underground storage tank systems must be properly installed in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and in accordance with the manufacturer's instructions.

165:25-2-35. Pre-installation

All installers of underground storage tank systems must perform an analysis of the installation site prior to the system's construction and installation and submit with the scheduling form. The analysis must include, at a minimum, the following:

(1) A determination of local soil conditions.

(2) The level of the water table in the area.

(3) Drainage conditions.

(4) The presence of any underground utility lines or conduits.

~~(b) Pre-approval by the Manager of Inspection and Compliance for PSTD is required for new installation plans if vapor or groundwater monitoring wells will be the method used for leak detection.~~

165:25-2-36. Tank system installation

(a) **Backfill material.** Backfill material used below, around, and/or above a new underground storage tank system installation must be clean, unused, non-corrosive porous material such as sand, crushed rock or pea gravel specified by the tank manufacturer. The licensed tank installer must be present and continuously supervise backfilling operations to ensure that proper procedures are followed.

(b) **UST installation**

(1) Owners/operators of all underground storage tank systems must notify PSTD at least 24 hours prior to the installation of underground storage tanks and/or lines by submitting the PSTD scheduling form and receiving confirmation of the installation and the Temporary Authorization for Receipt of Fuel from PSTD. Following the required 24-hour notification of new UST installations, an on-site inspection may be required at the following critical junctures. The PSTD Fuel Specialist may observe and/or inspect:

(A) The air/soap test of tanks.

(B) The tank pit prior to the placement of tank(s).

(C) The backfilling of the lower quadrant of tank(s).

(D) The air/soap test and layout of piping prior to backfilling.

(E) The tightness test of tanks and piping, and leak detector tests prior to startup.

(2) Precautions must be taken to prevent damage to the tank or piping coating during installation. Any damage to the coating must be repaired in accordance with the manufacturer's instructions prior to the completion of the installation.

(3) Piping must be arranged to minimize crossed lines and interference with conduits and other tank system components. If crossing is unavoidable, ~~adequate clearance~~factory specifications must be provided to prevent contact between piping segments.

(4) Underground piping must have a minimum slope of one-eighth inch (1/8") per foot toward the tank and must be buried below ground a minimum of 18" (inches).

(5) If a tank is installed in an area subject to a high water table or flooding, anchoring must be used to prevent tank flotation. Anchoring straps and associated equipment

must be installed in a manner that will prevent damage to the tank and/or its coating.

(6) The licensed installer must follow PEI RP-100 recommended practice for ballasting to prevent tank flotation during installation.

(7) Licensed UST Installers must be certified by the tank and line manufacturer if applicable.

(8) Photos of installation and other required documentation must be submitted with the PSTD registration form within 30 days and tank fees must be paid before a permit will be issued.

165:25-2-38. Fill pipe requirements

(a) Fill pipes that enter the top of a tank must have drop tubes installed and terminate within 6 inches (6", or 15 cm) of the bottom of the tank.

(b) Fill pipes should be installed or arranged so that vibration is minimized.

(c) Each fill pipe ~~for liquid storage~~ must be labeled by a permanent marking to identify the product stored. The marking must be maintained in legible condition throughout the life of the tank installation. Color coding of the tank fill riser lids must also be used.

165:25-2-39. Spill and overfill protection

(a) Owners and operators of underground storage tank systems, as well as those who transport regulated substances to these systems must do everything reasonably possible to ensure that releases due to spilling and overfilling do not occur.

(b) Tight fill connections must be used on all deliveries made to underground storage tanks.

(c) Tampering with overfill protection is not permitted. Any violation of this Section will be subject to the enforcement procedures of this Chapter ~~and any other~~resulting in fines,~~or~~ contempt proceedings, and/or shutdown of operations as provided by law.

(d) Except as provided in (e) of this Section, in order to prevent spilling and overfilling associated with product transfer to the petroleum storage tank system, the following prevention equipment must be used:

(1) Spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe (for example, a spill bucket).

(2) Overfill prevention equipment that will automatically shut off flow into the tank when the tank is no more than 95 percent full.

(A) A drop tube with overfill device is required on all tank systems installed after July 1, 2001.

(B) Tanks installed before July 1, 2001, must be upgraded to meet these standards before July 1, 2002, unless equipped with an operational ball float overfill device. Use of ball floats is prohibited with suction systems. Staff may require a ball float functionality test.

(e) The spill and overfill prevention equipment specified in (d) of this Section is not required if the underground storage tank system is filled by transfers of no more than 25 gallons at one time.

PART 5. PROTECTION AGAINST CORROSION

165:25-2-51. Corrosion protection

Any portion of a metallic tank or piping system in contact with the soil must be protected from corrosion. A cathodic protection system must be designed by a corrosion expert, installed and maintained in accordance with recognized standards of design, such as: American Petroleum Institute Publication 1632, Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems~~;~~.

165:25-2-53.1. Underground storage tank internal lining requirements

(a) A previously lined steel tank that fails precision tightness testing shall not be repaired and must be removed.

(b) Tank lining may not be used as a method of repair for an unlined tank.

(c) Within 10 years after lining, and every five years thereafter, lined USTs must be internally inspected and found to be structurally sound, with the lining still performing in accordance with original design specifications.

(d) Standards that must be referenced during the periodic inspection of lined USTs:

(1) American Petroleum Institute (API) Publication 1631.

(2) Ken Wilcox Associates, Inc. "Recommended Practices for Inspecting Buried Lined Steel Tanks Using a Video Camera," First Edition, 1999, Methods A and D.

(3) National Leak Prevention Association Standard 631.

(4) PSTD Internal Tank Lining Guidance document and PSTD Interior Lining Inspection Form available on OCC website at www.occeweb.com.

(e) UST owners/operators must submit to PSTD a copy of the certificate of performance (Interior Lining Inspection Form) completed by the inspection provider attesting that the UST meets the performance requirements for both the UST and the lining material. Any UST failing to meet the specified performance requirements cannot be relined. Minor imperfections may be repaired and the tank must be upgraded with a cathodic protection system within six months of the lining repair, or be removed. ~~Suitability of the tanks for upgrade by adding cathodic protection must be determined prior to application.~~

(f) USTs upgraded by the addition of both internal lining and cathodic protection do not require internal periodic inspection if the cathodic protection system has been properly installed and maintained on the UST system.

(g) Tank owners or their representative must provide 48 hour notification for all lining ~~procedures~~inspections to PSTD by submitting the ~~OCC~~PSTD scheduling form.

PART 6. PIPING

165:25-2-55.1. Underground storage tank piping materials

(a) All new or replacement underground pressurized piping must be installed as follows:

(1) Nonmetallic;

(2) Double-walled;

(3) A tracer locator wire must be installed in all piping trenches; and

(4) Tank, dispenser, and transition sumps must be installed and monitored per 165:25-3-6.29.

(b) All new or replacement suction product piping must meet the requirements of 165:25-3-6.29 as follows:

(1) Nonmetallic;

(2) Double-walled;

(3) A tracer locator wire must be installed in all piping trenches; and

(4) Tank, dispenser, and transition sumps must be installed and monitored per 165:25-3-6.29.

(c) Existing facilities that are replacing more than twenty feet (20') of underground piping must upgrade pursuant to (a) or (b) of this Section. If a metallic line fails due to corrosion, all metallic product lines at the facility must be immediately removed, and cannot be repaired.

(d) Existing facilities that are making any alteration to a fuel island when concrete removal is required must install dispenser sumps and monitor as pursuant 165:25-3-6.29.

(e) Existing facilities that are replacing dispensers must install dispenser sumps and monitor as pursuant to 165:25-3-6.29 if modifications are made below the dispenser cabinet.

(f) Existing facilities that are replacing underground storage tanks or making repairs ~~over the top of the tank~~at a submersible pump that ~~requires~~require excavation of dirt or concrete removal must install tank sumps and they must be monitored pursuant 165:25-3-6.29.

(g) Existing facilities that are replacing underground storage tanks must replace all single walled piping per (a) or (b) of this section.

(h) Piping installed as a siphon or to manifold tanks may be single wall non-metallic pipe.

(i) Ball valves must be installed on new safe suction lines to isolate lines for testing purposes.

165:25-2-55.2. Vent piping requirements

(a) Where vent pipes from tanks storing gasoline are adjacent to buildings or public ways, they must be located not less than 12 ft. (3.6 meters) above the adjacent ground level or 3 ft. above the roof line at the highest point of attachment. Effective July 2003, newly installed vent pipes must be 5 ft. above the roof or canopy. All vent pipes buried below ground must be a minimum of 18" (inches).

(b) In order to aid in dispersion, vapors must be discharged upward. Vent outlets must be located so that flammable vapors will not accumulate to an unsafe location or trapped under eaves and shall be at least 5 ft. (1.5 meters) from building openings and 15 ft. (4.5 meters from powered ventilation air intake devices).

(c) All new or replacement underground vent piping must be non-metallic. Aboveground vent risers must be steel pipe.

PART 7. DISPENSERS

165:25-2-75. Required signs

(a) Warning signs must be conspicuously posted in the dispensing area incorporating the following or equivalent wording:

(1) WARNING

(2) It is unlawful and dangerous to dispense gasoline into unapproved containers.

(3) No smoking.

(4) Stop motor.

(5) No filling of portable containers in or on a motor vehicle.

(6) Place container on ground before filling.

(7) Discharge your static electricity before fueling by touching a metal surface away from the nozzle.

(b) An OCC approved label must be displayed in a clear, conspicuous and prominent manner visible to customers using either side of the pump from which a blended ethanol or biodiesel product is dispensed. Failure to abide with signage requirements may result in fines, formal enforcement action, or shutdown of operations.

PART 11. REPAIRS TO UNDERGROUND STORAGE TANK SYSTEMS

165:25-2-111. Repairs to underground storage tank systems

(a) Repairs to underground storage tank systems must prevent releases due to structural failure or corrosion for the remaining operational life of the system.

(b) Repairs shall be conducted by qualified personnel possessing the appropriate skills, experience, competence, and any required license or certification to complete the work in accordance with provisions of this Chapter.

(c) Any repair shall be properly conducted in accordance with a standard or code of practice developed by a nationally recognized association or independent testing laboratory.

(d) Requirements of this Section do not apply to routine and minor maintenance activities related to the tank and piping system~~.~~

(e) Following completion of repairs, a tank or line tightness test ~~of the repaired structure ,~~must be performed by a certified tester~~,~~and is required prior to returning ~~it~~the tank or line to service.

PART 13. REMOVAL AND CLOSURES OF UNDERGROUND STORAGE TANK SYSTEMS

165:25-2-131. Tank removal and closure

(a) Owners/operators of all underground storage tank systems must notify ~~the~~ PSTD at least 14 days prior to the removal or permanent closure of underground storage tanks and/or lines by submitting the ~~OCC~~PSTD scheduling form and receiving confirmation of the removal from PSTD. If events require a

change in the date of removal, PSTD shall be given 48 hours notice of the new date.
(b) An authorized agent of PSTD may be present to observe the removal and to inspect the closed tank system and the surrounding environment prior to backfilling.
(c) Tanks and lines must be removed upon closure unless a Commission order grants a variance that allows the tanks to be closed in place.
(d) The licensed UST Remover must be on the job site during all removal activities, beginning with break-out of concrete.
(e) Photos must be taken of tank(s), line(s) and soil at removal. In the event there is a hole in tank(s) or line(s), further photographic evidence is required. If tank(s), line(s) or excavated soil show evidence of a release, photos of the apparent release must be taken that indicate the release source.

165:25-2-135. Permanent closure

~~Systems~~All systems out of service for more than 12 months must be removed if they do not comply with the requirements as stated in 165:25-2-133 and 165:25-2-134.

165:25-2-136. Assessing the site at closure or change in service

(a) ~~A~~When a change in service, tank or line repair, and/or replacement is completed, the owner/operator must measure for the presence of a release where contamination is most likely to be present at the underground storage tank system site.
(b) Please refer to the PSTD removal guidance document relating to UST closure sampling.
(c) If contaminated soils, contaminated groundwater, or free product as a liquid or vapor is discovered, the owner must immediately begin corrective action in accordance with ~~OAC 165:29, the Commission's Rules on Remediation~~Chapter 29 of Commission rules.
(d) All sampling at closures must be under the supervision of a Licensed ~~Remediation~~ Environmental Consultant.

165:25-2-137. Applicability to previously closed underground storage tank systems

(a) When directed by PSTD, the owner/operator of an underground storage tank system closed before April 21, 1989 must assess the excavation zone and close the underground storage tank system in accordance with this Chapter. PSTD may direct the owner/operator to assess the site or may assess the site itself if a potential for a suspicion of~~releases~~release from the underground storage tank system may, in the judgment of PSTD, pose a current or potential threat to human health, safety or the environment.
(b) Petroleum storage tank systems closed after April 21, 1989 and not upgraded to meet December 23, 1998 upgrade deadline must be removed and the site assessed in accordance with ~~165:25-2-136~~165:25-2-136 of Commission rules.

SUBCHAPTER 3. RELEASE PREVENTION AND DETECTION REQUIREMENTS

PART 2. RELEASE DETECTION REQUIREMENTS AND METHODS

165:25-3-6.28. Statistical Inventory Reconciliation (SIR)

(a) Deliveries, withdrawals and balance remaining must be recorded each operating day on the ~~OCC~~ PSTD Monthly Inventory Reconciliation Form or an electronic equivalent and data must be reconciled monthly.
(b) The tank must be equipped with a drop tube and measured for water at least monthly.
(c) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth inch (1/8").
(d) The regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery.
(e) Records must be submitted to a certified SIR vendor for monthly evaluation. Only third party certifications that have been reviewed and approved by the National Work Group on Leak Detection Evaluations (NWGLDE), found at the NWGLDE Web Site, will be accepted (nwglde.org).
(f) SIR analysis reports may include a summary report of the quantitative results and must include copies of all Monthly Inventory Reconciliation Forms.
(g) Results of monthly SIR analysis must be on premises no later than the end of the following month.
(h) This method is approved as release detection for tanks only.

165:25-3-6.29. Monitoring requirements for piping

Underground piping that routinely contains regulated substances must be monitored for releases in a manner that meets the following requirements:

(1) **Pressurized piping.**

(A) All underground piping that conveys regulated substances under pressure must be equipped with a mechanical or electronic line leak detector installed and operated in accordance with this Chapter.

(B) New installations and facilities replacing a piping system must have a sump sensor, float or similar mechanical device at each tank, transition, and dispenser sump. Sensors should be mounted near the bottom of the sump(s) and accessible for annual testing.

(C) New installations and facilities replacing a piping system must have double-walled piping. The interstitial area of the piping must be open inside the sumps to allow fuel to drain into the sumps in the event that a leak occurs.

(D) The underground pressure piping from the master dispenser to the satellite must be designed and installed so that the satellite piping is tested by the automatic line leak detector. An annual line tightness test is required on the satellite underground piping.

(2) **Suction piping.**

(A) Suction piping installed after July 2008 must be double-walled piping. The interstitial area of the

piping must be open inside the sumps to allow fuel to drain into the sumps in the event that a leak occurs.

(B) New installations and facilities replacing a piping system must have a sump sensor, float or similar mechanical device at each tank, transition, and dispenser sump. Sensors should be mounted near the bottom of the sump(s) and accessible for annual testing.

(3) **Methods of release detection for pressurized piping.** Each method of release detection for piping must be done in accordance with the following requirements.

(A) **Mechanical line leak detectors and annual line tightness testing.**

(i) An annual function test of the operation of the leak detector must be conducted by simulating a leak in accordance with the manufacturer's requirements.

(ii) A hydrostatic line tightness test must be done annually by a certified tester in accordance with this chapter.

(B) **Sump sensors with automatic line leak detectors.**

(i) Double walled piping with sump sensors, floats or similar mechanical devices at each sump may be used in lieu of annual line tightness testing except at marinas where a line tightness test is required by April 1st of each year.

(ii) The sump sensors, floats or other mechanical devices used must be tested annually according to manufacturer's requirements. Sensors status and alarm history reports must be printed and retained each month.

(iii) An annual function test of the operation of the leak detector must be conducted by simulating a leak in accordance with the manufacturer's requirements.

(C) **Electronic line leak detection.** A certified electronic line leak detector may be used in lieu of a mechanical line leak detector and annual tightness test only if:

(i) The system is capable of detecting and tests for a leak of 3 gallons per hour before or after each operation of the submersible turbine pump; and

(ii) The system is capable of detecting and tests for a leak of 0.2 or 0.1 gallons per hour at least once every month; and

(iii) The system is capable of detecting and tests for a leak of 0.1 gallons per hour annually, AND the system is function tested annually by simulating a leak, and if necessary, calibrated in accordance with manufacturer's specifications.

(4) **Methods of release detection for suction piping.**

(A) Safe Suction Piping. No release detection is required for suction piping installed prior to July 2008 if it is designed and constructed to meet (i) through (iv) below:

(i) The below-grade piping operates at less than atmospheric pressure.

(ii) The below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released.

(iii) One check valve is included in each suction line.

(iv) The check valve is located directly below and as close as is practical to the suction pump.

(B) Tri-annual Line Tightness Testing. Underground piping that conveys regulated substances under suction must have a line tightness test conducted at least every 3 years by a certified tester.~~.~~

(C) Sump sensors.

(i) Double walled piping with sump sensors, floats or similar mechanical devices at each sump may be used in lieu of tri-annual line tightness testing except at marinas where a line tightness test is required by April 1st of each year.

(ii) The sump sensors, floats or other mechanical devices used must be tested annually according to manufacturer's requirements. Sensors status and alarm history reports must be printed and retained each month.

165:25-3-7. Release reporting [AMENDED AND RENUMBERED TO 165:25-3-7.1]

~~(a) The reporting requirements of this Part do not relieve the owner/operator of the responsibility to take necessary corrective action pursuant to OAC 165:29, the Commission's Rules on Remediation, to protect the public health, safety and the environment, including the containment and cleanup of spills and overfills that are not required to be reported by this Chapter.~~

~~(b) All underground storage tank system owners, operators, their employees or agents, or transporters must report any of the following events to PSTD by telephone at (405) 521-6575 or toll free at 1-888-621-5878 (if after hours or on weekends or holidays, a detailed message must be left on PSTD's answering machine) within 24 hours of knowing of any of the following situations. Owners or operators must provide written confirmation to follow within 20 days in accordance with the requirements established in this Chapter.~~

~~(1) The discovery of released regulated substances at the facility or in the surrounding area (such as the presence of free product or vapors in soils, basements, crawlspaces, sewer and utility lines, and nearby surface water).~~

~~(2) Any unusual operating conditions observed, such as the unexplained erratic behavior of product dispensing equipment, the sudden loss of product from the underground storage tank system, or an unexplained presence of water in the tank, unless system equipment is found to be defective but not leaking, and is immediately repaired or replaced.~~

~~(A) In the case of inventory control, two consecutive months where the Total Gallons Over/Short is greater than the "Leak Check" (1 percent of product sales plus 130 gallons) must be reported to PSTD within 24 hours of the owner/operator knowing the inventory control results.~~

~~(B) Any UST system failure from a third party-certified Statistical Inventory Reconciliation (SIR) analysis must be reported to PSTD within 24 hours of the owner/operator knowing of the failure. An immediate investigation into the cause of the failed report must be conducted and results reported to PSTD within 7 days.~~

~~(C) An "Inconclusive" report from an SIR monthly analysis must be reported within 24 hours of the owner or operator knowing of the report. An Inconclusive means that the UST system has failed to meet leak detection requirements for that month.~~

~~(3) An unusual level of vapors on the site that is of unknown origin. A vapor observation well reading in excess of 4,000 units/ppm from a pit containing gasoline tanks, and in excess of 1,500 units/ppm for a pit containing diesel or both gasoline and diesel, must be reported to PSTD within 24 hours of the owner/operator or any of his or her employees at the facility knowing the monitoring results. Within 10 days, the owner/operator must submit to PSTD all vapor monitoring well data for the last 12 months. Upon examination of the submitted data, PSTD will advise the owner/operator what action, if any, is needed.~~

~~(4) An increase in vapor levels of 500 units/ppm above background or historical levels detected by monthly monitoring, even though below the 24 hour reporting level, must be reported if the increase does not correct itself in the second month of monitoring and it must be reported to PSTD within 24 hours of the owner or operator or any of his or her employees at the facility knowing the monitoring results.~~

~~(5) Monitoring results from a release detection method required by this Chapter that indicate a release may have occurred unless the monitoring device is found to be defective, and is immediately repaired, recalibrated, or replaced, and additional monitoring does not confirm the initial result.~~

~~(c) While aboveground releases of petroleum of less than 25 gallons need not be reported, they must be recorded by the owner/operator and contained and cleaned up immediately. All of the following releases must be reported to PSTD by telephone within 24 hours of discovery, with a written confirmation to PSTD within 20 days in accordance with the requirements established in this Chapter:~~

~~(1) All known belowground releases in any quantity; for example, a release resulting from a line broken during an excavation.~~

~~(2) Any aboveground release of petroleum greater than 25 gallons.~~

~~(3) Any aboveground release of petroleum which is less than 25 gallons, but cannot be contained and cleaned up within 24 hours.~~

~~(d) All owners/operators of underground storage tank systems must maintain records of all reportable and nonreportable events listed in this section sufficient to permit adequate inspection and review by PSTD. These records must be kept for 3 years following the date of the event.~~

~~(e) If any of the possible, probable or definite release conditions above are not reported within 24 hours, the owner/operator must be prepared to provide documentation or evidence that would reasonably indicate why knowledge of release conditions or monitoring results was delayed.~~

PART 3. RELEASE INVESTIGATION REQUIREMENTS

165:25-3-7.1. Release reporting

(a) The reporting requirements of this Part do not relieve the owner/operator of the responsibility to take necessary corrective action pursuant to Chapter 29 of Commission rules, to protect the public health, safety and the environment, including the containment and cleanup of spills and overfills that are not required to be reported by this Chapter.

(b) All underground storage tank system owners, operators, their employees or agents, or transporters must report any of the following events to PSTD by telephone at (405) 521-6575 or toll free at 1-888-621-5878 (if after hours or on weekends or holidays, a detailed message must be left on PSTD's answering machine) within 24 hours of discovery of any of the following situations. Owners or operators must provide written confirmation to follow within 20 days in accordance with the requirements established in this Chapter.

(1) The discovery of released regulated substances at the facility or in the surrounding area (such as the presence of free product or vapors in soils, basements, crawlspaces, sewer and utility lines, and nearby surface water).

(2) Any unusual operating conditions observed, such as the unexplained erratic behavior of product dispensing equipment, the sudden loss of product from the underground storage tank system, or an unexplained presence of water in the tank, unless system equipment is found to be defective but not leaking, and is immediately repaired or replaced.

(A) In the case of inventory control, two consecutive months where the Total Gallons Over/Short is greater than the "Leak Check" (1 percent of product sales plus 130 gallons) must be reported to PSTD within 24 hours of the owner/operator discovering the inventory control results.

(B) Any UST system failure from a third party-certified Statistical Inventory Reconciliation (SIR) analysis must be reported to PSTD within 24 hours of the owner/operator discovering the failure. An immediate investigation into the cause of the failed report must be conducted and results reported to PSTD within 7 days.

(C) An "Inconclusive" report from an SIR monthly analysis must be reported within 24 hours of the owner or operator discovering the report. An Inconclusive means that the UST system has failed to meet leak detection requirements for that month.

(3) An unusual level of vapors on the site that is of unknown origin. A vapor observation well reading in excess of 4,000 units/ppm from a pit containing gasoline

tanks, and in excess of 1,500 units/ppm for a pit containing diesel or both gasoline and diesel, must be reported to PSTD within 24 hours of the owner/operator or any of his or her employees at the facility discovering the monitoring results. Within 10 days, the owner/operator must submit to PSTD all vapor monitoring well data for the last 12 months. Upon examination of the submitted data, PSTD will advise the owner/operator what action, if any, is needed.

(4) An increase in vapor levels of 500 units/ppm above background or historical levels detected by monthly monitoring, even though below the 24-hour reporting level, must be reported if the increase does not correct itself in the second month of monitoring and it must be reported to PSTD within 24 hours of the owner or operator or any of his or her employees at the facility discovering the monitoring results.

(5) Monitoring results from a release detection method required by this Chapter that indicate a release may have occurred unless the monitoring device is found to be defective, and is immediately repaired, recalibrated, or replaced, and additional monitoring does not confirm the initial result.

(c) While aboveground releases of petroleum of less than 25 gallons need not be reported, they must be recorded by the owner/operator and contained and cleaned up immediately. All of the following releases must be reported to PSTD by telephone within 24 hours of discovery, with a written confirmation to PSTD within 20 days in accordance with the requirements established in this Chapter:

(1) All known belowground releases in any quantity; for example, a release resulting from a line broken during an excavation.

(2) Any aboveground release of petroleum greater than 25 gallons.

(3) Any aboveground release of petroleum which is less than 25 gallons, but cannot be contained and cleaned up within 24 hours.

(d) All owners/operators of underground storage tank systems must maintain records of all reportable and nonreportable events listed in this section sufficient to permit adequate inspection and review by PSTD. These records must be kept for 3 years following the date of the event.

(e) If any of the possible, probable or definite release conditions above are not reported within 24 hours, the owner/operator must be prepared to provide documentation or evidence that would reasonably indicate why knowledge of release conditions or monitoring results was delayed.

165:25-3-8. Release investigation and confirmation

(a) This Section applies to the investigation of all reportable releases unless ~~the~~ PSTD specifically waives any part of this Section in writing.

(b) Owners/operators must immediately investigate and confirm all suspected releases of regulated substances requiring reporting under this Chapter within 7 days of receipt of notice from PSTD using the following steps or another procedure approved by PSTD:

(1) **System test.** Owners/operators must conduct tightness tests that determine whether a leak exists in the storage tank system.

(A) Owners/operators must repair, remove or replace the underground storage tank system and begin investigation in accordance with (b)(2) of this Section if the test results for the system, tank, or delivery piping indicate that a leak exists.

(B) Further investigation is not required if the test results for the system, tank, and delivery piping do not indicate that a leak exists and chemical concentrations of regulated substances detected in soil or water are not the basis for suspicion of a release.

(C) Owners/operators must conduct a site check as described in (b)(2) of this Section if the test results for the system, tank and delivery piping do not indicate that a leak exists but indicate concentrations of regulated substances detected in soil or water are above action levels cited in (c).

(2) **Site check.** Owners/operators must measure for the presence of a release where released chemicals are most likely to be present at the underground storage tank system site. In selecting sample types, sample locations, sample depths, and measurement methods, owners and/or operators must consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of native soil, the depth of groundwater, and other factors appropriate for identifying the presence and source of the release. Sample locations should be approximately 5 feet (5') from the outside of the UST system in native soil or another location approved by PSTD. Analyses for both BTEX constituents and the appropriate TPH must be obtained in all cases. Site check investigations must be conducted by an OCC licensed ~~Remediation~~Environmental Consultant.

(A) If the test results for soil and/or groundwater taken outside the excavation zone or the underground storage tank system site confirm that a release has occurred, owners and/or operators must begin corrective action in accordance with ~~OAC 165:29, the Commission's Rules on Remediation~~Chapter 29 of Commission rules.

(B) If the test results for the native soil and/or groundwater or the underground storage tank system site do not indicate that a release has occurred, further investigation is not required.

(c) Laboratory analysis of levels of chemical constituent concentrations that may be required to confirm a case are:

(1) Benzene

(A) Native Soils - 0.5 mg/kg

(B) Groundwater - 0.005 mg/l

(2) Toluene

(A) Native Soils - 40.0 mg/kg

(B) Groundwater - 1.0 mg/l

(3) Ethyl Benzene

(A) Native Soils - 15.0 mg/kg

(B) Groundwater - 0.7 mg/l

(4) Xylene

(A) Native Soils - 200.0 mg/kg
(B) Groundwater - 10.0 mg/l
(5) TPH
(A) Native Soils - 50.0 mg/kg
(B) Groundwater - 2.0 mg/l
(C) If BTEX concentrations are below action levels, a TPH concentration of 500 ppm or mg/kg in soil shall be required to confirm a case at the direction of PSTD.

(d) Within 20 days after the reporting of a release, the owner and/or operator must submit a report to PSTD summarizing the steps taken under (a) of this Section and any resulting information or data. If a release is confirmed through performance of the steps taken under this Section, then the report must be submitted in accordance with a format established by the Commission, after which ~~a remediation~~corrective action may be undertaken under the provisions of Chapter 29 of Commission rules.

PART 15. CORRECTIVE ACTION REQUIREMENTS

165:25-3-70. Corrective action

Corrective action must be conducted in accordance with ~~OAC 165:29, which governs the remediation of contaminated sites~~Chapter 29 of Commission rules.

SUBCHAPTER 14. SPECIAL REQUIREMENTS FOR UNDERGROUND STORAGE TANK SYSTEMS UTILIZED BY BULK PLANT FACILITIES

PART 1. GENERAL APPLICATION AND COMPLIANCE PROVISIONS

165:25-14-1. Application

(a) This Subchapter applies to the storage, handling and use of regulated substances at bulk plant facilities. Bulk plants built after July 1, 2001 must comply with all provisions of this Chapter and Subchapter.

(b) Subchapters 1 General Provisions, 2 General Requirements for UST's, 3 Release Prohibition and Detection, and 5 Upgrades shall also apply in addition to this Subchapter.

SUBCHAPTER 18. INSPECTIONS, NOTICES OF VIOLATION, AND CITATIONS

PART 3. NOTICES OF VIOLATION AND CITATIONS

165:25-18-13. Payment of fine or hearing

(a) The storage tank owner/operator can either pay the amount of the fine as stated in the Fine Citation or request an evidentiary hearing.

(b) The tank owner/operator will have thirty (30) days from the date the citation was issued to pay the fine.

(1) A fine may be paid with cash, a money order, or check. Any cash payment must be made at the Commission's cashier window. All checks must be made payable to the Oklahoma Corporation Commission - Petroleum Storage Tank Division. If sending payment through the mail, a copy of the citation must be sent with the payment to ensure proper credit.

(2) Payment of a fine within the 30-day timeframe will not be considered an agreement or disagreement with the citation.

(c) If the storage tank owner/operator disagrees with the citation, they may appear at the Citation hearing at the Commission. If found guilty at the hearing, the tank owner or operator must pay the amount of the fine, as well as an administrative cost of $250.00.

(d) If a Fine Citation has not been paid within ninety (90) days of being issued or within ninety (90) days of a Commission order confirming the fine, the amount of the fine will double. Refusal to comply with an order of the Commission may result in an additional fine being levied after notice and hearing in an amount as allowed by law, and shutdown of the facility for failure to pay fines.

(e) Failure of a tank owner/operator to appear at the hearing will result in additional enforcement action.

(f) An appeal from the hearing must be to the Commission en banc in accordance with ~~OAC165:5~~ Chapter 5 of Commission rules.

(g) A tank owner/operator is still responsible for following the Commission's rules regarding petroleum storage tanks regardless of paying a fine or correcting a violation.

[OAR Docket #15-440; filed 6-11-15]

TITLE 165. CORPORATION COMMISSION CHAPTER 26. ABOVEGROUND STORAGE TANKS

[OAR Docket #15-441]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions
Part 1. Purpose and Definitions
165:26-1-2. Definitions [AMENDED]
Part 3. Scope of Rules
165:26-1-21. Overview of applicability [AMENDED]
165:26-1-22. Exclusions [AMENDED]
Part 4. Administrative Provisions
165:26-1-25.1. Citation of rules [AMENDED]
165:26-1-26. Hearings, orders and appeals [AMENDED]
165:26-1-29. Notices [REVOKED]
Part 5. Standards and Codes
165:26-1-31. Codes and standards [AMENDED]
Part 7. Notification and Reporting Requirements

165:26-1-42. New tank systems [AMENDED]
165:26-1-44. Tank closure or change in service [AMENDED]
165:26-1-48. Tank and line tightness testing [AMENDED]
Part 11. Fees
165:26-1-70. Fees [AMENDED]
Part 13. Shutdown of Operations
165:26-1-90. Shutdown of operations [AMENDED]
Part 15. Licensing Procedures
165:26-1-110. Licensing procedure for aboveground storage tank licensee [AMENDED]
165:26-1-113. License penalties [NEW]
Subchapter 2. General Requirements for Aboveground Storage Tank Systems
Part 1. Design and Installation
165:26-2-1.1. Aboveground storage tank installation [AMENDED]
165:26-2-5.1. General spill and overfill prevention requirements [AMENDED]
Part 9. Dispenser Requirements
165:26-2-91. Dispensers [AMENDED]
Part 13. Miscellaneous Safety Provisions
165:26-2-132. Required signs [AMENDED]
Part 19. Repairs to Aboveground Storage Tank Systems
165:26-2-191. Repairs to aboveground tank systems [AMENDED]
Part 21. Removal and Closure of Aboveground Storage Tank Systems
165:26-2-210. Tank removal and closure [AMENDED]
165:26-2-212.1. Requirements for returning to service [AMENDED]
165:26-2-214. Assessing the site at tank closure or change in service [AMENDED]
Subchapter 3. Release Prevention and Detection
Part 4. Release Detection
165:26-3-20.2. Installation and monitoring requirements for underground piping [AMENDED]
Part 14. Release Reporting Requirements
165:26-3-77. Release reporting [AMENDED]
Part 17. Release Investigation
165:26-3-171. Release investigation and confirmation [AMENDED]
Subchapter 4. Inspections, Penalties, and Field Citations
Part 5. Notices of Violation, Warning Citations and Fine Citations
165:26-4-18. Payment of fine or hearing [AMENDED]

AUTHORITY:
The Commission's statutory authority is found in 17 0.S. §§ 306, 307, 321.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
n/a

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June 8, 2015

EFFECTIVE:
August 27, 2015

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:

Incorporated standards:
Incorporation of various standards of the following organizations are added or revised:
American National Standards Institute, American Society of Mechanichal Engineers
American Petroleum Institute
American Society for Testing and Materials
National Association of Corrosion Engineers
National Fire Protection Association
Underwriter's Labratory
Petroleum Equipment Institute

Incorporating rules:
165:26-1-31

Availability:
8:00 am to 4:30 pm
Oklahoma Corporation Commission
Office of Petroleum Tank Division
4th Floor, Jim Thorpe Bldg.
2101 N. Lincoln Blvd., Oklahoma City

ANALYSIS:
Experience has shown that certain rules need to be clarified to fully explain where the authority for the rule is located or a companion rule that is referenced. Certain definitions were urged by the regulated community and adopted. The adopted rules exclude aboveground storage tanks and quick lube facilities to maximize Commission staff attention to more critical aspects of storage tank regulation. Also, experience has shown elements of the regulated community are not in compliance with signage requirements, so a penalty provision was attached to the adopted rule. The adopted rules include electrical repair as this is to be performed by a licensed electrician.

CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 1. GENERAL PROVISIONS

PART 1. PURPOSE AND DEFINITIONS

165:26-1-2. Definitions

In addition to the terms defined in 17 O.S. § 301 et seq., the following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:

"Aboveground storage tank" or **"AST"** means any stationary tank not included within the definition of a petroleum storage tank in OAC 165:25-1-11, which is designed to contain any PST regulated substances without structural support of earthen material.

"Aboveground storage tank system" means an aboveground storage tank and any connected aboveground or underground piping, dispensers and associated equipment and fixtures.

"Agent" means a person authorized by another to act on their behalf, either out of employment or contract.

"Airports" mean landing facilities for aircraft which are routinely available for public use (whether routinely used or not). Airports as used in this Chapter do not include private airstrips or private airports.

"Ancillary equipment" means any device including, but not limited to: devices, such as piping, fittings, flanges, valves, and pumps that are used to distribute, meter, or control the flow of regulated substances to or from ~~an~~a petroleum storage tank.

"ATG" means automatic tank gauging.

"Backfill" is the material that is placed in ~~a tank and/or~~ piping excavation to support and separate the ~~tank and/or~~ piping~~,~~ from the natural environment.

"BTEX" means benzene, toluene, ethylbenzene and xylene.

"Bulk plant" means petroleum storage tank facility where regulated substances are received by tank vessels, pipelines, tank cars, or tank vehicles and are stored or blended in mass quantities or bulk for the purpose of distributing them by a tank vessel, pipeline, tank car, tank vehicle, portable tank or other container, for wholesale or retail sale.

"Cathodic protection" means a technique designed to prevent the corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, protection can be accomplished with an impressed current system or a galvanic anode system

"Change in service" means discontinuing use of the petroleum storage system for purposes regulated by PSTD.

"Commission"or "OCC" means the Oklahoma Corporation Commission and includes its designated agents or representatives.

"Compatible" means the ability of two or more substances to maintain their respective physical properties upon contact with one another for the design life of the PST system under conditions likely to be encountered in the system.

"Construction tank" means a fuel tank used for less than 12 months at a construction site.

"Division" means the Petroleum Storage Tank Division (PSTD) of the Corporation Commission.

"EPA" means the United States Environmental Protection Agency.

"Farm tank" is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. "Farm" includes but is not limited to fish hatcheries, rangeland, and nurseries with growing operations.

"Fire protected tank" means an aboveground storage tank that is listed in accordance with UL 2085, *Standard for Insulated Aboveground Tanks for Flammable and Combustible Liquids,* or an equivalent test procedure that consists of a primary tank provided with protection from physical damage and fire-resistive protection from exposure to a high-intensity liquid pool fire.

"Fire resistant tank" means a UL listed aboveground storage tank that provides fire-resistant protection from exposures to a high intensity liquid pool fire.

"Fleet and Commercial" means any facility that uses aboveground storage tanks to store regulated substances for use in its own vehicles or equipment. ~~This definition extends to facilities that provide oil change and lube services to consumers.~~

"Flow-through process tank" means a tank that forms an integral part of a production process through which there is a steady, variable, recurring or intermittent flow of material during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction to the process or for the storage of finished products or by-products from the production process

"Fund" means the Petroleum Storage Tank Indemnity Fund.

"Generation facilities" means those tanks that are permanently installed, which routinely contain fuel to be used in emergency generators in the event of a power failure.

"Impervious barrier" means a barrier of sufficient thickness, density, and composition that ~~it~~ is impenetrable to the regulated substance, has a permeability of at least 1 X 10^{-6} cm/sec., and will prevent the discharge to the environment of any regulated substance for a period of at least as long as the maximum anticipated time during which the regulated substance will be in contact with the impervious material.

"In service" means a petroleum storage tank that contains a regulated substance, and/or has a regulated substance added to or withdrawn from it.

"Licensed Environmental Consultant" means an individual who has a current license issued by PSTD to perform corrective action.

"Marina" means any fuel storage ~~facility~~tank system located on or by the water for the purpose of fueling watercraft.

"Permanent out of use" or "POU" means a petroleum storage tank system that is not in service/use, does not contain regulated substances, and is not intended to be placed back in service/use.

"Pier" means dock, floating dock, and wharf.

"Positive sampling, testing, or monitoring results" means the results of sampling, testing or monitoring using any of the release detection methods described in this Chapter that indicate that a release from ~~an~~a petroleum storage tank system may have occurred.

"Private airport" means an airport used only by its owner and regulated as a fleet and commercial facility.

"Private airstrip" means a personal residential takeoff and landing facility attached to the airstrip owner's residential property and used only by the owner.

"PSTD" means Petroleum Storage Tank Division.

"Public Utility" means any entity providing gas, electricity, water, or telecommunication~~s~~ services for public use.

"Regulated substances" means antifreeze, motor oil, motor fuel, gasoline, kerosene, diesel or aviation fuel. It does not include compressed natural gas.

"Release detection" means the methodology used in determining whether a release of regulated substances has occurred from a petroleum storage tank ~~or~~ system ~~into the environment or into the interstitial area between the petroleum storage tank system and its secondary barrier~~.

"Residential tank" is a tank located on property used primarily for dwelling purposes

"Responsible person" means a person other than a petroleum storage tank system owner or operator, such as an adjacent property owner, impacted party, or city, seeking corrective action of real property, and submits itself to the jurisdiction of the Commission.

"Retail facility" means a service station, convenience store or any other facility selling motor fuel that is open to the general public.

"Sacrificial anode" means a device to reduce or prevent corrosion of a metal in an electrolyte by galvanic coupling to a more anodic metal.

"Secondary containment" means a system installed around a petroleum storage tank or system that is designed to prevent a release from migrating beyond the secondary containment system outer wall (in the case of a double-walled tank system) or excavation area (in the case of a liner or vault system) before the release can be detected. Such a system may include, but is not limited to, impervious barriers (both natural and synthetic), double walls, or vaults.

"TPH" means total petroleum hydrocarbons.

"Tampering" means willful intention which makes an attempt to deceive, cheat or misrepresent the facts to the public. It also presents a risk to environmental welfare, as well as public health, safety and welfare.

"Tank tightness testing" or **"precision testing"** means a procedure for testing a petroleum storage tank system's ~~ability to prevent an inadvertent release of any stored regulated substances into the environment~~integrity.

"Temporary~~closure~~out of use" or "TOU" means the status of a petroleum storage tank system that has been taken out of ~~service~~service/use but not removed with the intent to return to service.

"Used Motor Oil" is any spent engine oil removed from a motor vehicle.

"Vault" means an enclosure consisting of four walls, a floor, and a top for the purpose of containing a liquid storage tank and not intended to be occupied by personnel other than for inspection, repair, or maintenance of the vault, the storage tank or related equipment.

PART 3. SCOPE OF RULES

165:26-1-21. Overview of applicability

This Chapter will apply to owners,~~and~~ operators, their employees and agents of aboveground storage tanks which PSTD is authorized to regulate pursuant to 27A O.S. (Supp. 1999) § 1-3-101 (E) (5) (b) and 17 O.S. § 301 et seq., which gives PSTD the responsibility of regulating aboveground storage tanks that contain regulated substances, including but not limited to, tanks from which these materials are dispensed into vehicles, or tanks used in wholesale or bulk distribution activities, as well as pumps, hoses, dispensers, and other ancillary equipment associated with the tanks, whether above the ground or below, excluding tanks at refineries or at the upstream or intermediate shipment points of pipeline operations, and excluding compressed natural gas whether used as a motor fuel or not. PSTD references the National Fire Protection Association 30 and 30A, Standard Number 30, 2003, "Flammable and Combustible Liquids Code" and Standard Number 30A, 2003, "Automotive and Marine Service Station Code". New editions of NFPA 30 and NFPA 30A supersede all previous editions.

165:26-1-22. Exclusions

(a) The following classes of aboveground storage tanks or systems are specifically excluded from all provisions of this Chapter:

(1) All tanks used in the exploration or production of oil and gas, including well service equipment and natural gas compression equipment. These activities are regulated by the Commission's Oil and Gas Conservation Division.

(2) All mobile or temporary tanks used at construction sites.

(3) All farm and ranch tanks.

(4) All tanks used by public utilities in the generation of electric power for public use.

(5) All tanks used by manufacturers in the production of goods.

(6) Emergency generator tanks.

(b) These exclusions do not extend to permanently located fuel storage tanks used to fuel company vehicles, even though the vehicles may be driven to production or construction sites.

PART 4. ADMINISTRATIVE PROVISIONS

165:26-1-25.1. Citation of rules

This Chapter will be known as the Oklahoma Corporation Commission's General Rules and Regulations Governing Aboveground Storage Tanks and are to be cited as ~~OAC 165:26~~ Chapter 26 of Commission rules.

165:26-1-26. Hearings, orders and appeals

(a) The Commission will issue orders as necessary to enforce the provisions of this Chapter to protect property, human health and safety, and the environment.

(b) Hearings to enforce or appeal enforcement of the provisions of this Chapter will be done in accordance with ~~the Commission's Rules of Practice, OAC 165:5~~Chapter 5 of Commission rules.

165:26-1-29. Notices [REVOKED]

~~Notices, applications and reports may be submitted faxed or sent to: Oklahoma Corporation Commission, Petroleum Storage Tank Division, Jim Thorpe Office Building, Room 241, P.O. Box 52000, Oklahoma City, Oklahoma 73152-2000, (405) 521-4683, or toll free at 1-800-621-5878, fax number (405) 521-4945.~~

PART 5. STANDARDS AND CODES

165:26-1-31. Codes and standards

(a) Specific references to documents listed below are made throughout the Aboveground Storage Tank Rules. Each of these documents or parts thereof is adopted and incorporated by reference as a standard. In the event these rules are in conflict with any of the standards set forth below, the provisions of these rules shall prevail. New editions of codes and standards supersede all previous editions. These codes and standards

will be updated periodically through a formal rulemaking procedure initiated by PSTD to reflect any substantive or relevant changes. A copy is available for inspection at the Offices of the Petroleum Storage Tank Division during regular business hours.

(1) American National Standards Institute (ANSI) Standards: American Society of Mechanical Engineers (ASME):

~~(A) Standard B31.3, 1999-2004, "Chemical Plant and Petroleum Refinery Piping"~~.

(A) ASME B31.3-2012, "Process Piping".

~~(B) Standard B31.4, 1998-2002, "Liquid Transportation Systems for Hydrocarbons, Liquid Petroleum Gas, Anhydrous Ammonia and Alcohols"~~

(B) ASME B31.4-2012, "Pipeline Transportation Systems for Liquids and Slurries".

(2) American Petroleum Institute (API) Standards:

~~(A) Recommended Practice 652, "Lining of Aboveground Petroleum Storage Tank Bottoms", Second Edition, April, 1997.~~

(A) API RP 652, "Lining of Aboveground Petroleum Storage Tank Bottoms", Second Edition, April, 1997.

~~(B) Publication 1628, 1996 "A Guide, The Assessment and Remediation of Underground Petroleum Releases".~~

(B) API 1628 SET, "A Guide to the Assessment and Remediation of Underground Petroleum Releases".

~~(3) American Society for Testing and Materials (ASTM) Standards: Standard E 1739-95, 1995,"Standard Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites".~~

(3) American Society for Testing and Materials (ASTM) Standards: ASTM E1739-95 (2010) el, "Standard Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites".

~~(4) National Association of Corrosion Engineers (NACE) Standards: Standard Number RP-0169-96, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems."~~

(4) National Association of Corrosion Engineers (NACE) Standards: NACE SP0169-2007, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems".

(5) National Fire Protection Association (NFPA) Standards:

~~(A) Standard Number 30, 2003, "Flammable and Combustible Liquids Code".~~

(A) Standard Number 30, 2015, "Flammable and Combustible Liquids Code".

~~(B) Standard Number 30A,2003, "Automotive and Marine Service Station Code"~~

(B) Standard Number 30A, 2015, "Motor Fuel Dispensing Facilities and Repair Garages".

(6) Underwriter's Laboratory (UL) Standards:

~~(A) Standard UL142, 1987-2002, "Steel Aboveground Tanks for Flammable and Combustible Liquids".~~

(A) Standard UL142, 2006, "Steel Aboveground Tanks for Flammable and Combustible Liquids".

~~(B) Standard UL842, 1980-1999, "Valves for Flammable Fluids".~~

(B) Standard UL842, 2007, "Valves for Flammable Fluids".

(C) Standard UL971, 2005, "Nonmetallic Underground Piping for Flammable Liquids

~~(7) Petroleum Equipment Institute: Publication PEI/RP 200-03, "Recommended Practices for Installation of Aboveground Storage Tank Systems for Motor Vehicle Fueling".~~

(7) Petroleum Equipment Institute: Publication PEI/RP 200-13, "Recommended Practices for Installation of Aboveground Storage Systems for Motor Vehicle Fueling". (2013 Edition)

(8) "Spill Prevention, Control and Countermeasure Regulation", 40 CFR 112.

(b) The standards set forth in (a) of this Section are also available from the following sources:

(1) American National Standards Institute (ANSI), Thirteenth Floor; 11 West 42nd Street, New York City, New York, 10036; Telephone: (212) 642-4900.

(2) American Society of Mechanical Engineers (ASME), Three Park Ave., 23S2, New York, NY 10016-5990; Telephone (800) 843-2763.

(3) American Petroleum Institute (API), Publications and Distribution, 1220 "L" Street, N.W., Washington, D.C. 20005-4070; Telephone (202) 682-8000.

(4) American Society for Testing and Materials (ASTM), 100 Bar Harbor Drive, West Conshohocken, Pennsylvania 19428-2959; Telephone (610) 832-9585.

(5) National Association of Corrosion Engineers (NACE), 1440 South Creek Drive, Houston, Texas 77084; Telephone (281) 492-0535.

(6) National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, Massachusetts 02269-9101; Telephone (800) 344-3555.

(7) National Groundwater Association (NWWA), 601 Dempsey Road, Westeville, Ohio 43081; Telephone (614) 898-7791.

(8) Underwriter's Laboratory (UL), 333 Pfingsten Road, Northbrook, Illinois 60062; Telephone (847) 272-8800, extension 2612.

(9) Petroleum Equipment Institute, P.O. Box 2380, Tulsa, Oklahoma, 74101-2380; Telephone (918) 494-9696.

PART 7. NOTIFICATION AND REPORTING REQUIREMENTS

165:26-1-42. New tank systems

(a) Persons intending to install a new aboveground storage tank and/or new aboveground or underground piping must

give ~~the~~ PSTD notification of the installation at least 24 hours before the tank and/or lines are to be installed by submitting the PSTD scheduling form and receiving confirmation of the installation and the Temporary Authorization for Receipt of Fuel from PSTD. If events require the owner to change the date of installation, the Division should be given 48 hours notice of the new date. Any removal associated with replacement of tanks or lines requires at least 14 day notification prior to the removal activity.

(b) Upon receipt of the scheduling form an authorization letter giving temporary approval to receive fuel into an un-permitted tank will be sent to the owner. This letter will expire 90 days after the date of issuance. After the tank installation is complete, the PSTD registration form must be submitted with copies of required installation testing, photographs of the tank and piping system components before they are covered, an as-built drawing of the entire tank system, and manufacturer installation checklists within 30 days. The registration form must be approved and tank fees paid in order to receive a tank permit. No regulated storage tank system can be operated without a valid permit from the Corporation Commission.

(c) Owners and AST Licensees must certify on the PSTD Registration form that the installation of tanks and piping meet the requirements of this Chapter.

165:26-1-44. Tank closure or change in service

Owners of aboveground storage tank systems must notify PSTD at least 14 days prior to the removal of the aboveground storage tanks and/or lines by submitting the PSTD scheduling form and receiving confirmation of the removal from PSTD. If events require the owner to change the date of removal, the Division should be given 48 hours notice of the new date. An authorized agent of PSTD may be present to observe the removal operations and to inspect the closed tank system and the surrounding environment. Any company that removes aboveground storage tank systems must have an AST Licensee on the jobsite during removal. All UST's being used as AST's must be destroyed upon removal and evidence of destruction submitted to PSTD.

165:26-1-48. Tank and line tightness testing

(a) Tank and line tightness test results in which any part of the tank system tested does not pass must be reported to PSTD within 24 hours by the owner, operator, their employees or agents, and also independently by the person or company performing the test. Complete test results must be submitted within 7 days of the testing.

(b) Hydrostatic line tightness tests must be conducted in accordance with and reported on the prescribed PSTD form.

(c) The tester performing line and leak detector tests must certify that the line leak detector is installed properly.

(d) All personnel performing tank and line testing must have the required education, experience, knowledge and competence to correctly perform testing services in accordance with the testing equipment, manufacturer certification and applicable industry standards or codes.

(e) Tank and line tightness testing must be scheduled by submitting the PSTD scheduling form and PSTD staff may be present.

PART 11. FEES

165:26-1-70. Fees

This Chapter requires the following ~~persons to pay~~ fees according to the schedule set out in ~~165:5-3-2~~Chapter 5 of Commission rules:

(1) Owners or operators of all aboveground storage tank systems in use during the fiscal year.

(2) AST ~~licensees~~Licensees and Environmental Consultantswho become licensed pursuant to the provisions of this Chapter.

PART 13. SHUTDOWN OF OPERATIONS

165:26-1-90. Shutdown of operations

(a) ~~The~~ PSTD may close (shut down) a system:

(1) If the system poses an imminent threat to health, safety, or the environment.

(2) If the owner or operator is operating tanks for which permit fees have not been paid.

(3) If the owner or operator fails to comply with a Commission order.

(4) For failure to properly install, operate and/or maintain leak detection, spill, overfill, or corrosion equipment if the owner/operator has been issued a written notice of violation and has failed to take corrective action.

(5) Failure to protect a buried metal flexible connector from corrosion if the owner/operator has been issued a written notice of violation and has failed to take corrective action.

(6) Failure to perform, maintain, have readily available or present records for the previous twelve (12) months.

(7) Tampering with equipment.

(b) ~~The~~ PSTD must close (shut down) a system:

(1) If required spill prevention equipment is not installed.

(2) If required overfill protection equipment is not installed.

(3) If required leak detection equipment is not installed.

(4) If required corrosion equipment is not installed.

(5) If 2" or more of water is found in the tank where conventional gasoline or diesel fuel is stored and if 1/2 " or more of water is found in the tank of gasoline blended with alcohols, E85 fuel ethanol, or diesel blended with biodiesel.

(6) If meter is found to be off in calibration by more than -15 cubic inches per every 5 gallons.

(c) Only PSTD designated employees have the authority to lock or seal dispensers and/or fill pipes of any system violating subsection (a) or (b) of this Section. The PSTD employee must explain to the owner or operator the reason the AST system is being locked or sealed.

(d) The PSTD "Out of Order" tag attached to each fill pipe of the tank(s) in violation shall serve to clearly identify the tank(s) as ineligible for delivery, deposit, or acceptance of product. Tank owners/operators and product deliverers are responsible for ensuring that product is not delivered into the tagged tank(s).

(e) Owners, operators, or any persons who remove a lock or seal without permission from PSTD will be subject to penalties imposed by this Chapter, or formal enforcement proceedings.

(f) Upon confirmation that the AST system no longer poses an imminent threat to health, safety, or the environment, permit fees paid, violation(s) corrected, or Commission order requirements satisfied, the authority to remove a lock or seal by the owner or operator may be obtained as follows:

(1) ~~Verbal or written~~Written permission from the PSTD employee who placed the lock or seal on the device; or

(2) Verbal or written permission from the Manager of Compliance and Inspection; or

(3) Application to and order of the Commission.

(g) If a facility is closed under the provisions of this Section, the owner or operator of the facility will be afforded a hearing within ten (10) days of receipt by PSTD of the owner's or operator's application for a hearing.

PART 15. LICENSING PROCEDURES

165:26-1-110. Licensing procedure for aboveground storage tank licensee

(a) Any individual who would like to become an aboveground storage tank licensee must:

(1) Complete an application form.

(2) Provide sufficient proof of 2 years' related work experience, and of active participation in the completion of 3 aboveground storage tank handling activities, 2 of which must be installations.

(3) Pass an examination approved by PSTD.

(4) Pay fees for applications, examinations, and licensing prior to examination and license issuance.

(5) Certify that they will comply with all PSTD rules and requirements for aboveground storage tanks.

(b) All examinations and licensing procedures must be completed within one (1) year of approval of the application. Failure to complete will result in forfeiture of fees and will require a new application and appropriate fees.

(c) Continuing education is required to maintain an AST license; this consists of four hours of continuing education through a Commission approved program every two years.

~~(d) PSTD shall have the responsibility to deny, suspend, refuse to renew or revoke the license, or reprimand any aboveground storage tank installer who is found guilty of:~~

~~(1) The practice of any fraud or deceit in obtaining a license or in performing work pursuant to this Chapter.~~

~~(2) Any gross negligence, incompetence or misconduct in installation work performed pursuant to this Chapter.~~

~~(3) Knowingly making false statements or signing false statements, certificates or affidavits to PSTD or to clients with the intention to induce payment.~~

~~(4) Aiding or assisting another person in violating any provision of this Chapter.~~

~~(5) Signing a verification statement for work performed pursuant to this Chapter which was not performed by the aboveground storage tank licensee.~~

~~(6) Engaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm a customer or the public.~~

~~(7) Being under indictment or convicted for a criminal act.~~

~~(e) Prior to any license suspension, revocation, or refusal to renew, the Director of the PSTD shall have the matter investigated and a report made to the Director for consideration. If the Director elects to pursue suspension, revocation, or refusal to renew, PSTD will schedule a hearing before an Administrative Law Judge and the licensee will be officially notified. The burden of substantial evidence rests upon PSTD.~~

~~(f) This Section in no way exempts the aboveground storage tank licensee from having to meet other applicable requirements as set by state and federal statutes and regulations from other state and federal agencies.~~

(~~g~~d) Any person who holds an AST license may install or remove AST systems.

165:26-1-113. License penalties

(a) PSTD shall have the responsibility to deny, suspend, refuse to renew or revoke the license, or reprimand any licensee who is found guilty of:

(1) The practice of any fraud or deceit in obtaining a license or in performing work pursuant to this Chapter.

(2) Any gross negligence, incompetence or misconduct in installation work performed pursuant to this Chapter.

(3) Knowingly making false statements or signing false statements, certificates or affidavits to PSTD or to clients with the intention to induce payment.

(4) Aiding or assisting another person in violating any provision of this Chapter.

(5) Signing a verification statement for work performed pursuant to this Chapter which was not performed by the aboveground storage tank licensee.

(6) Engaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm a customer or the public.

(7) Being under indictment or convicted for a criminal act.

(8) Failure to submit Commission required paperwork within 30 days.

(b) Prior to any license suspension, revocation, or refusal to renew, the Director of PSTD shall have the matter investigated and a report made to the Director for consideration. If the Director elects to pursue suspension, revocation, or refusal to renew, PSTD will schedule a hearing before an Administrative Law Judge and the licensee will be officially notified. The burden of substantial evidence rests upon PSTD.

(c) This Section in no way exempts the licensee from having to meet other applicable requirements as set by state and federal statutes and regulations from other state and federal agencies.
(d) Any licensee in violation of state law, enabling statutes, PSTD rules and/or Commission orders may be subject to fines assessed by the Commission after notice and hearing.

SUBCHAPTER 2. GENERAL REQUIREMENTS FOR ABOVEGROUND STORAGE TANK SYSTEMS

PART 1. DESIGN AND INSTALLATION

165:26-2-1.1. Aboveground storage tank installation

All tanks, piping, and associated equipment used in conjunction with ~~a~~an AST installation shall be installed by personnel possessing appropriate skills, experience, and required PSTD license to complete the installation in accordance with recognized industry standards and this Chapter. An AST licensee must be present at all times during the installation. Photos of the installation of tank(s) and line(s) must accompany a completed registration form within 30 days of installation and tank fees must be paid before a permit is issued.

165:26-2-5.1. General spill and overfill prevention requirements

(a) Owners and operators of aboveground storage tank systems, as well as those who transport regulated substances to these systems must do everything reasonably possible to ensure that releases due to spilling and overfilling do not occur.
(b) Tanks with a fill pipe must be filled through a liquid tight connection mounted inside at least a 5 gallon spill container. A spill bucket is not required if the fill pipe is located within the containment dike. Where an aboveground tank is filled by means of fixed piping, either a check valve and shutoff valve with a quick-connect coupling or a check valve with a dry-break coupling shall be installed in the piping at a point where connection and disconnection is made inside the spill containment between the tank and the delivery vehicle. This device shall be protected from tampering and physical damage. Tampering with equipment is not permitted. Any violation of this section may result in fines, enforcement action and/or shutdown of operations.
(c) One of the following methods must be used to prevent overfilling.

(1) High liquid level alarms with an audible or visual signal at a constantly attended operation or surveillance station.
(2) High liquid level pump cutoff devices set to stop flow at a predetermined container content level.
(3) Direct audible or code signal communication between the container gauger and the pumping station.
(4) A fast response system for determining the liquid level of each ~~builk~~bulk storage container such as digital computers, telepulse, or direct vision gauges. If this alternative is used a person must be present to monitor gauges and the overall filling of the tank.

(d) Liquid level sensing devices must be tested at least annually to ensure proper operation.
(e) Means shall be provided for determining the liquid level in each tank and this means shall be accessible to the delivery operator. Tank filling shall not begin until the delivery operator has determined that the tank has sufficient available capacity (ullage).

PART 9. DISPENSER REQUIREMENTS

165:26-2-91. Dispensers

(a) Liquids must be transferred from storage tanks by means of fixed pumps designed and equipped to allow control of the flow and prevent leakage or accidental discharge.
(b) Dispensing devices for Class I and Class II liquids must be listed.

(1) Existing listed or labeled dispensing devices may be modified provided the modifications made are "Listed by Report" by an approved testing laboratory or as otherwise approved by PSTD.
(2) Modification proposals must contain a description of the component parts used in the modification and the recommended methods of installation on specific dispensing devices, and they must be made available to PSTD upon request.

(c) A control must be provided that will permit the pump to operate only when a dispensing nozzle is removed from its bracket or normal position with respect to the dispensing device and only when the switch on this dispensing device is manually actuated. This control must also stop the pump when all nozzles have been returned either to their brackets or to the normal non-dispensing position.
(d) A listed emergency breakaway device designed to retain liquid on both sides of the breakaway point must be installed on each hose dispensing any class of liquids. These devices must be installed and maintained in accordance with the manufacturer's instructions. Where hoses are attached to a hose-retrieving mechanism, the listed emergency breakaway device must be installed between the point of attachment of the hose-retrieving mechanism to the hose and the hose nozzle valve.
(e) All gasoline, gasoline-alcohol blends, gasoline-ether blends, E85 Fuel ethanol, and M85 methanol dispensers located at retail facilities shall have a 10 micron or smaller nominal pore-sized filter. All biodiesel, biodiesel blends, diesel, and kerosene dispensers located at retail facilities shall have a 30 micron or smaller nominal pore-sized filter.
(f) Dispensers at new installations that are connected to aboveground piping must have containment or sumps underneath the dispensers.

PART 13. MISCELLANEOUS SAFETY PROVISIONS

165:26-2-132. Required signs

(a) Warning signs must be conspicuously posted in the dispensing area incorporating the following or equivalent wording:

(1) WARNING

(2) It is unlawful and dangerous to dispense gasoline into unapproved containers.

(3) No smoking.

(4) Stop motor.

(5) No filling of portable containers in or on a motor vehicle.

(6) Place container on ground before filling.

(b) An OCC approved label must be displayed in a clear, conspicuous and prominent manner visible to customers using either side of the pump from which a blended ethanol or biodiesel product is dispensed. Failure to abide with signage requirements may result in fines, and/or enforcement action.

PART 19. REPAIRS TO ABOVEGROUND STORAGE TANK SYSTEMS

165:26-2-191. Repairs to aboveground tank systems

Repairs to an aboveground storage tank system, excluding electrical work, must be performed by an AST Licensee. Routine maintenance such as painting and repairs to a product dispensing unit will not be considered repairs to the storage tank system.

PART 21. REMOVAL AND CLOSURE OF ABOVEGROUND STORAGE TANK SYSTEMS

165:26-2-210. Tank removal and closure

(a) Owners and Operators of all aboveground storage tank systems must notify the Petroleum Storage Tank Division at least 14 days prior to the removal or permanent closure of aboveground storage tanks and/or lines by submitting the PSTD scheduling form. If events require a change in the date of removal, the Division shall be given 48 hours notice of the new date.

(b) An authorized agent of PSTD may be present to observe the removal and to inspect the closed tank system and the surrounding environment prior to backfilling.

(c) Tanks and lines must be removed upon closure unless PSTD grants a variance.

(d) An AST Licensee must remove aboveground storage tank systems.

(e) Photos must be taken of tank(s), line(s), and soil at removal. In the event there is a hole in a tank or line, further photographic evidence is required. If tank(s), line(s) or excavated soil show evidence of a release, photos of the apparent release must be taken that indicate the release source.

165:26-2-212.1. Requirements for returning to service

(a) A tightness test must be completed on the underground portion of out of service systems if more than 12 months have elapsed since the last tightness test.

(b) ~~Systems~~All systems out of service for more than 12 months are required to meet all the requirements of this Chapter.

165:26-2-214. Assessing the site at tank closure or change in service

(a) Before permanent closure or a change in service is completed, the owner or operator must measure for the presence of a release where contamination is most likely to be present at the aboveground storage tank system site. Please refer to the PSTD AST sampling guidance document when choosing sample locations.

(b) For tank systems containing petroleum product, analyses must be done for both TPH and BTEX.

(c) If contaminated soils, contaminated groundwater, or free product as a liquid or vapor is discovered, the owner must immediately begin corrective action in accordance with ~~OAC 165:29, the Commission's Rules on Remediation~~Chapter 29 of Commission rules.

(d) Any sampling at closures must be conducted under the supervision of a ~~licensed Remediation~~ Licensed Environmental Consultant.

(e) The requirements of this Section do not apply to aboveground storage tanks which are located in or on buildings.

SUBCHAPTER 3. RELEASE PREVENTION AND DETECTION

PART 4. RELEASE DETECTION

165:26-3-20.2. Installation and monitoring requirements for underground piping

Underground piping that routinely contains regulated substances must be installed and monitored for releases in a manner that meets the following requirements:

(1) **Pressurized piping.**

(A) Piping that conveys regulated substances under pressure must be equipped with an automatic line leak detector installed and operated in accordance with this Chapter.

(B) New installations and facilities replacing a piping system must have at least one sump sensor, float or similar mechanical device for each tank system, located at the bottom of the lowest piping gradient sump. The interstitial area of the piping must be open inside the sumps to allow fuel to drain into the sumps in the event that a leak occurs. Sensors must be mounted at the bottom of the sump(s) and accessible for testing.

(C) Underground pressure piping from a master dispenser to a satellite dispenser must be designed

and installed so that the satellite piping is tested by the automatic line leak detector. An annual line tightness test is required on the satellite underground piping.

(2) **Suction piping.** New installations and facilities replacing a piping system must have at least one sump sensor, float or similar mechanical device for each tank system, located at the bottom of the lowest piping gradient sump. The interstitial area of the piping must be open inside the sumps to allow fuel to drain into the sumps in the event that a leak occurs. Sensors must be mounted at the bottom of the sump(s) and accessible for testing.

(3) **Methods of release detection for pressurized piping.** Each method of release detection for underground pressurized piping must be performed in accordance with the following requirements:

(A) Automatic mechanical line leak detectors and annual line tightness testing:

(i) Methods which alert the owner and/or operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping or by triggering an audible or visual alarm may be used only if they detect leaks of 3 gallons per hour at 10 psi line pressure within 1 hour.

(ii) An annual test of the operation of the leak detector must be conducted by simulating a leak in accordance with the manufacturer's requirements.

(iii) Automatic line leak detectors installed on or after September 22, 1991 must be capable of detecting the leak rate with a probability of detection of 0.95 and a probability of false alarm of 0.05.

(iv) A hydrostatic line tightness test must be performed annually by a certified tester.

(B) Sump sensors with automatic line leak detectors

(i) Double walled piping with sump sensors, floats or similar mechanical devices at each dispenser, transition and tank sump may be used in lieu of annual line tightness testing except at marinas where a line tightness test is required by April 1st of each year.

(ii) The sump sensors, floats or other mechanical devices used must be tested annually according to manufacturer's requirements. Sensors status and alarm history reports must be printed and retained each month.

(iii) An annual function test of the operation of the leak detector must be conducted by simulating a leak in accordance with the manufacturer's requirements.

(C) Electronic line leak detection. A certified electronic line leak detector may be used in lieu of ~~an~~a mechanical line leak detector and annual tightness test only if:

(i) The system is capable of detecting and tests for a leak of 3 gallons per hour before or after each operation of the submersible turbine pump; and

(ii) The system is capable of detecting and tests for a leak of 0.2 gallons per hour at least once every month; and

(iii) The system is capable of detecting and tests for a leak of 0.1 gallons per hour annually; and

(iv) The system must be function tested annually by simulating a leak in accordance with manufacturer's specifications. If the system has printer capabilities, attach the electronic line leak detector printout documenting the system shutdown or ~~alarmed~~alarm when tested.

(4) **Methods of release detection for suction piping.** Each method of release detection for underground suction piping must be performed in accordance with the following requirements.

(A) Sump Sensors

(i) Double walled piping with sump sensors, floats or similar mechanical devices at each dispenser, transition and tank sump may be used in lieu of annual line tightness testing except at marinas where a line tightness test is required by April 1st of each year.

(ii) The sump sensors, floats or other mechanical devices used must be tested annually according to manufacturer's requirements. Sensors status and alarm history reports must be printed and retained each month.

(B) Annual Line Tightness Testing. A hydrostatic line tightness test must be performed annually by a certified tester.

PART 14. RELEASE REPORTING REQUIREMENTS

165:26-3-77. Release reporting

(a) The reporting requirements of this Part do not relieve the owner or operator of the responsibility to take necessary corrective action pursuant to ~~OAC 165:29, the Commission's Rules on Remediation,~~Chapter 29 of Commission rules to protect the public health, safety and the environment, including the containment and cleanup of spills and overfills that are not required to be reported by this Chapter.

(b) All aboveground storage tank system owners, operators, their employees or agents, or transporters must report any of the following events to PSTD by telephone at (405) 521-6575 or toll free at 1-888-621-5878 (if after hours or on weekends or holidays, a detailed message must be left on the PSTD answering machine) within 24 hours of ~~knowing~~discovery of any of the following situations. Owners or operators must provide written confirmation to follow within 20 days in accordance with the requirements established in this Chapter. Qualifying events include:

(1) The discovery of released regulated substances at the aboveground storage tank system facility or in the surrounding area (such as the presence of free product or vapors in soils, basements, crawlspaces, sewer and utility lines, and nearby surface water);

(2) Any unusual operating conditions observed by owners and/or operators, such as the unexplained erratic behavior of product dispensing equipment, the sudden loss of product from the aboveground storage tank system, or an unexplained presence of water in the tank, unless system equipment is found to be defective but not leaking, and is immediately repaired or replaced.

(3) In the case of inventory control, two consecutive months where the Total Gallons Over/Short is greater than the "Leak Check" (1 percent of product sales plus 130 gallons) must be reported to PSTD within 24 hours of the owner or operator ~~knowing~~discovering the inventory control results.

(4) Monitoring results from a release detection method required by this Chapter that indicate a release may have occurred unless the monitoring device is found to be defective, and is immediately repaired, recalibrated, or replaced, and additional monitoring does not confirm the initial result.

(c) While aboveground releases of petroleum of less than 25 gallons need not be reported, they must be recorded by the owner or operator and contained and cleaned up immediately. All of the following releases must be reported by telephone within 24 hours of discovery, with a written confirmation to follow within 20 days in accordance with the requirements established in this Chapter:

(1) All known belowground releases in any quantity; for example, a release resulting from a line broken during an excavation.

(2) Any aboveground release of petroleum greater than 25 gallons.

(3) Any aboveground release of petroleum that is less than 25 gallons, but cannot be contained and cleaned up within 24 hours.

(d) All owners and/or operators of aboveground storage tank systems must maintain records of all reportable and non-reportable events listed in this section sufficient to permit adequate inspection and review by PSTD. These records must be kept for 3 years following the date of the event.

(e) If any of the possible, probable or definite release conditions in subsections (a) through (c) above are not reported within 24 hours, the owner or operator must be prepared to provide documentation or evidence that would reasonably indicate why knowledge of release conditions or monitoring results was delayed.

PART 17. RELEASE INVESTIGATION

165:26-3-171. Release investigation and confirmation

(a) This Section applies to the investigation of all reportable releases unless ~~the~~ PSTD staff specifically waives any part of this Section in writing.

(b) Owners and/or operators must immediately investigate and confirm all suspected releases of regulated substances requiring reporting under this Chapter within 7 days of receipt of notice from PSTD, using the following steps or another procedure approved by PSTD:

(1) **System test.** Owners and/or operators must conduct tightness tests that determine whether a leak exists in the storage tank system.

(A) Owners and/or operators must repair, remove or replace the aboveground storage tank system and begin investigation in accordance with (b)(2) of this Section if the test results for the system, tank, or delivery piping indicate that a leak exists.

(B) Further investigation is not required if the test results for the system, tank, and delivery piping do not indicate that a leak exists and if indicator chemical concentrations detected in soil or water are not the basis for suspecting a release.

(C) Owners and/or operators must conduct a site check as described in (b)(2) of this Section if the test results for the system, tank and delivery piping do not indicate that a leak exists but indicator chemical concentrations detected in soil or water are above action levels cited in (c).

(2) **Site check.** Owners and/or operators must measure for the presence of a release where regulated substances are most likely to be present at the aboveground storage tank system site. In selecting sample types, sample locations, sample depths, and measurement methods, owners and/or operators must consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of native soil, the depth of groundwater, and other factors appropriate for identifying the presence and source of the release. Sample locations should be approximately 5 feet (5') from the outside of the AST system in native soil or another location approved by PSTD. Analyses for both BTEX constituents and the appropriate TPH must be obtained in all cases. Site check investigations must be performed by a PSTD ~~licensed Remediation~~Licensed Environmental Consultant.

(A) If the test results for soil and/or groundwater taken outside the excavation zone or the aboveground storage tank system site confirm that a release has occurred, owners and/or operators must begin corrective action in accordance with ~~OAC 165:29, the Commission's Rules on Remediation~~Chapter 29 of Commission rules.

(B) If the test results for the native soil and/or groundwater or the aboveground storage tank system site do not indicate that a release has occurred, further investigation is not required.

(c) Laboratory analysis of levels of chemical constituent concentrations that may be required to confirm a case are:

(1) Benzene

(A) Native Soils - 0.5 mg/kg

(B) Groundwater - 0.005 mg/l

(2) Toluene

(A) Native Soils - 40.0 mg/kg

(B) Groundwater - 1.0 mg/l

(3) Ethyl Benzene

(A) Native Soils - 15.0 mg/kg

(B) Groundwater - 0.7 mg/l

(4) Xylene

(A) Native Soils - 200.0 mg/kg
(B) Groundwater - 10.0 mg/l
(5) TPH
(A) Native Soils - 50.0 mg/kg
(B) Groundwater - 2.0 mg/l
(C) If BTEX concentrations are below action levels, a TPH concentration of 500 ppm or mg/kg in soil shall be required to confirm a case at the direction of PSTD.

(d) Within 20 days after the reporting of a release, the owner and/or operator must submit a report to PSTD summarizing the steps taken under (a) of this Section and any resulting information or data. If a release is confirmed through performance of the steps taken under this Section, then the report must be submitted in accordance with a format established by PSTD, after which a remediation may be undertaken under the provisions of Chapter 29.

SUBCHAPTER 4. INSPECTIONS, PENALTIES AND FIELD CITATIONS

PART 5. NOTICES OF VIOLATION, WARNING CITATIONS AND FINE CITATIONS

165:26-4-18. Payment of fine or hearing

(a) The storage tank owner or operator can either pay the amount of the fine as stated in the citation or request an evidentiary hearing.

(b) The tank owner or operator will have thirty (30) days from the date the citation was issued to pay the fine.

(1) A fine may be paid with cash, a money order, or check. Any cash payment must be made at the Commission cashier. All checks must be made payable to the Oklahoma Corporation Commission - Petroleum Storage Tank Division. If sending payment through the mail, a copy of the citation must be sent with the payment to ensure proper credit.

(2) Payment of the citation within the 30 day time frame will not be considered an agreement or disagreement with the citation.

(c) If the storage tank owner or operator disagrees with the citation, he or she can have a hearing at the Commission.

(1) To request a hearing, the procedure as provided on the citation should be followed and must be made within seven (7) days from the date the citation was issued.

(2) PSTD will set a date for a hearing and will notify the tank owner or operator of the date and time of the hearing.

(3) If found guilty at the hearing, the tank owner or operator must pay the amount of the citation, as well as an administrative cost of $250.00.

(d) If a citation has not been paid within ninety (90) days of being issued or within ninety (90) days of a Commission order confirming the fine, the amount of the fine will double. Refusal to comply with an order of the Commission may result in formal enforcement after notice and hearing in an amount as allowed by law.

(e) Failure of a tank owner or operator to appear at the hearing will result in additional enforcement actions. These actions may include the addition of a larger fine and/or assessment of an administrative fee.

(f) An appeal from the hearing may be made to the Commission en banc in accordance with ~~OAC 165:5~~Chapter 5 of Commission rules.

(g) A tank owner or operator is still responsible for following the Commission's rules regarding petroleum storage tanks regardless of paying a fine or correcting a violation.

[OAR Docket #15-441; filed 6-11-15]

TITLE 165. CORPORATION COMMISSION CHAPTER 27. INDEMNITY FUND

[OAR Docket #15-442]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
165:27-1-1. Purpose [AMENDED]
165:27-1-2. Definitions [AMENDED]
165:27-1-3. Scope [AMENDED]
165:27-1-5. Citation of rules [AMENDED]
165:27-1-6. Prescribed forms [AMENDED]
Subchapter 3. Eligibility Requirements
165:27-3-1. General requirements [AMENDED]
Subchapter 5. Qualifications for Reimbursement
165:27-5-1. Qualifications for reimbursement [AMENDED]
165:27-5-2. Application for reimbursement [AMENDED]
Subchapter 7. Reimbursement
165:27-7-1. Reimbursable expenses [AMENDED]
165:27-7-2. Reimbursement [AMENDED]
165:27-7-6. Conditions for reimbursement [AMENDED]
165:27-7-9. The Pre-Approval Program [AMENDED]
165:27-7-11. Purchase order procedures [AMENDED]
Subchapter 9. Administrative Provisions
165:27-9-1. Hearing, orders, and appeals [AMENDED]
165:27-9-2. Changes to rules [AMENDED]
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ANALYSIS:
Due to recent litigation regarding releases, staff determined that a definition of the statutory word "Occurrence" was necessary. In addition the rules were

thoroughly reviewed to tighten up any vocabulary/grammatical/statutory/rule citation for accuracy.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 1. GENERAL PROVISIONS

165:27-1-1. Purpose

The Indemnity Fund Program will provide reimbursement for corrective action performed of PSTD regulated pollution sites that have resulted from releases of petroleum from storage tank systems. The Indemnity Fund Program as a good steward of monies entrusted to it, will also prioritize cases to most effectively protect the public health, safety and welfare and ~~minimize damage~~minimize damage to the environment. In order to accomplish these purposes, the Indemnity Fund Program will reimburse allowable costs incurred for corrective action to eligible parties for eligible releases from eligible tank systems and advise, consult, cooperate with and assist other agencies of this state.

165:27-1-2. Definitions

In addition to the terms defined in 17 O.S. Sections 303, 352, and in OAC 165:25-1-11, 165:26-1-2, and 165:29-1-11 the following words or terms, when used in this Chapter, are the Commission's interpretation of enabling statutes and shall have the following meaning unless the context clearly indicates otherwise:

"Actual physical ~~damages~~damage" means those damages to real and personal property directly related to a release of petroleum from a Commission regulated storage tank system. Personal property damage is limited to the replacement value of the personal property less depreciation. Real property ~~damages~~damage is limited to the lesser of the property value or diminution in property value directly associated with a release of regulated substances from a Commission regulated storage tank system. In no event will the Indemnity Fund reimburse speculative damages, inferred damages, unrealized damages or any other damages where damage costs are not actually incurred, paid, or otherwise established to the Commission's satisfaction. The burden of proof shall be upon the person seeking compensation from actual physical damages.

"Administrative Application" means an Application for eligibility and reimbursement made to the Commission by the Director of the Petroleum Storage Tank Division on behalf of an unavailable or unwilling Applicant to facilitate meeting the Program's obligation to protecting public health, safety and welfare.

"Agent" means a person authorized by another to act on their behalf, either out of employment or contract.

"Allowable Costs" means costs that are reasonable, integral and necessary to corrective action.

"Assignment of Benefits" means a written directive from the Applicant of Record instructing the PSTD Indemnity Fund to pay reimbursement directly to the named Assignee.

"Assignment of Rights" (aka "Limited Power of Attorney") means a transfer of authority granting the Assignee the legal right to act on the Assignee's behalf for specified matters.

"Associated costs" means expenses that are not integral to the corrective action and not subject to reimbursement.

"Chemicals of Concern ("COC") means chemicals that may pose a threat to human health and the environment.

"Claim or Claims" means a properly submitted request for reimbursement from the Fund for an SOR or eligible case when the co-pay is paid.

"Closed file" means a file for which final resolution has been made of all invoices submitted for corrective action taken under an application for reimbursement from the Indemnity Fund.

"Commission or OCC" means the Oklahoma Corporation Commission.

"Confirmed Release" means a release of petroleum from a regulated storage tank system resulting in levels of chemicals of concern in native soils and/or groundwater that exceed state action levels to which a PSTD case number is assigned and further corrective action is required.

"Contamination" means pollution in the native environment caused by a release of a regulated substance above action levels for that substance as set by the Commission.

"Disbursement" includes all monies, actually paid, expended, encumbered, reserved or attributable to a reimbursable event(s).

"Dispenser" means equipment, gauge(s), hose(s), nozzle(s), immediately associated pipe or fittings and other such appurtenances located aboveground and intended for dispensing PSTD-regulated substances from a tank system. The dispenser is not part of a tank system for purposes of the Indemnity Fund Program.

"Eligible Person" means the party who has made application to the Indemnity Fund and met applicable criteria to become eligible to receive reimbursement on an OCC confirmed release, and who has been issued an Eligibility Letter from the Indemnity Fund. An eligible person may be an impacted party or adjacent owner.

"Eligible Release" means a release of a petroleum product that qualifies for Indemnity Fund eligibility and/or reimbursement, and generally includes only those products and/or a release from a storage tank system regulated by the OCC.

"Fund" means the Petroleum Storage Tank Indemnity Fund.

"Impacted Party" means an owner whose property has been impacted by a release from an on-site or off-site petroleum storage tank system that was never owned or operated by

the impacted party and who has no OCC regulatory responsibility. An Impacted Party can apply for Fund eligibility and reimbursement, and the Fund deductible is not applicable.

"Investigation" means activities taken to identify, confirm, monitor or delineate the physical extent of a release and which result in the selection of an appropriate means to remediate a release and specific design criteria for such remediation upon currently used costing programs and/or reasonable competitive bids.

"Licensed ~~Remediation~~Environmental Consultant" means an individual who has a current license issued by the PSTD to perform corrective action.

"Medical injury(ies)" means actual physical injury to a person in which medical costs have been incurred in association with the diagnosis and treatment of a physical injury directly caused by a release of petroleum from a Commission regulated storage tank system.

"Occurrence" means the release of a PSTD regulated substance into the soil or groundwater. Each PSTD regulated substance will be treated as one occurrence regardless of the composition of the substance released. Separate occurrences of the same PSTD regulated substance may be allowed if evidence establishes the PSTD regulated substance occurred in two different tank system locations, are separated by time, or both.

"Pay for Performance (PFP)" means a process where an environmental consulting company (Consultant) guarantees by contract that a release of a regulated substance will be remediated to Chemicals of Concern (COC) levels agreed to by the PSTD, the Consultant and tank owner/operator that are protective of human health, safety and the environment. This performance-based process encompasses several steps, but is not limited to the contract signed by an officer/owner of the environmental consulting company, the applicant and the Administrator of the Indemnity Fund and an agreed to reasonable price. Scheduled payments are distributed only as performance-based goals are attained.

"Petroleum storage tank system" means a closed-plumbed system including storage tank(s), line(s) and dispenser(s) for a given product, e.g. a facility site can have a gasoline and a diesel system, or systems for different grades of gasoline, or even separate systems for the same grade of gasoline. It also includes a transport truck when attached to a tank system, and a used oil tank.

"PSTD" means Petroleum Storage Tank Division, or Division.

"Purchase Order" means a document ~~that is~~ submitted to PSTD online to obtain pre-approval by PSTD of a scope of work and the costs associated with the scope of work.

"Reimbursement" means repayment of a claim to a qualified Claimant or Assignee, or for an Administrative Application, or for such a claim submitted on behalf of a qualified Claimant, for incurred allowable costs resulting from an eligible release.

"Remedial Action Plan" means a plan implementing the required and approved remediation.

"Remediation" means the process or technique used to reduce concentration levels of regulated substances in the soil and groundwater, and/ or to reduce the presence of free product in the environment to levels that are protective of human health, safety and the environment.

"Site assessment" means a multi-step process designed to determine if a site has possibly been impacted by an amount of regulated substance(s).

"Site characterization" means a report submitted to the Commission that defines the extent of the contamination. The report should include, as a minimum, all things required by ~~OAC 165:29~~Chapter 29 of Commission rules for such a report.

"Suspicion of Release" ("SOR") means preliminary investigative work performed under a PSTD Purchase Order to determine if a release has occurred. A modified eligibility process for a SOR is required.

"Work Plan" means a proposed scope of work submitted online to implement corrective action. ~~This shall be submitted through a purchase order request and/or remediation plan.~~

165:27-1-3. Scope

This Chapter provides a basis that will allow the Indemnity Fund Program to ~~organize and maintain itself,~~ define eligible persons, eligible releases, and eligible tank systems, allowable costs, methods, limitations of reimbursement, corrective action, completed work, and standards that will protect the public health, safety,~~and~~ welfare ~~of~~and the ~~state and its~~ environment, and offers specific procedures ~~and policies~~ for prompt and timely reimbursement of allowable costs to eligible persons.

165:27-1-5. Citation of rules

This Chapter shall be known as the Oklahoma Corporation Commission's General Rules and Regulations Governing the Petroleum Storage Tank Indemnity Fund and may be cited as ~~OAC 165:27~~Chapter 27 of Commission rules.

165:27-1-6. Prescribed forms

All current, recognized and approved division forms must be used and are available from the PSTD or on the web page at www.occeweb.com,~~or~~ in person or by written request.

SUBCHAPTER 3. ELIGIBILITY REQUIREMENTS

165:27-3-1. General requirements

In order to qualify for reimbursement from the Fund, a person must meet the following requirements:

(1) The person must be an eligible storage tank owner or operator, property owner, adjacent property owner, or impacted party who has met applicable criteria for Fund reimbursement, to include Fund eligibility for an OCC confirmed release case, or a PSTD-authorized Purchase Order for a Suspicion of Release, that does require modified eligibility. The Director of PSTD may make a formal administrative application without meeting eligibility criteria.

(2) The claimant must have incurred eligible expenses for an eligible release for which reimbursement is requested.

(3) The claimant must submit timely and properly completed forms for reimbursement to the Fund in accordance with governing statutes and the Rules of this Chapter set forth in ~~OAC 165:27~~Chapter 27 of Commission rules et seq.

(4) The release of substances must be from an eligible tank system, either present, abandoned, or formerly present at the facility where the release occurred. It is the sole duty and responsibility of the Indemnity Fund applicant to establish to the satisfaction of the PSTD that a tank system is/was formerly present, and that the tank system contains/contained regulated substances.

(5) If tanks were in service after November 8, 1984, the person who owns either the tank system or the property or both, where a tank system is located, is the responsible person regardless of the person never having sold, stored or otherwise owned or operated the storage tank system while the storage tank system contained regulated substances.

SUBCHAPTER 5. QUALIFICATIONS FOR REIMBURSEMENT

165:27-5-1. Qualifications for reimbursement

In order to receive reimbursement from the Indemnity Fund, a person must, among other requirements:

(1) In order to receive reimbursement every scope of work must have a pre-approved Purchase Order and/or a Pay for Performance Contract. The scope of work must be completed in accordance with the standards, requirements, rules, and regulations of ~~the~~ PSTD. Initially submitted claims and resubmitted claims shall be evaluated by the Division under the system of evaluation employed by the program at the time the claim is originally submitted or re-submitted unless otherwise directed by PSTD.

(2) The ~~Applicant~~eligible person must be eligible and approved in the Fund for a confirmed release case. Modified eligibility in the Fund is required for reimbursement on Suspicions of Release, and other investigations.

(3) The ~~Applicant~~eligible person must apply for reimbursement with timely and properly completed forms, including a certified affidavit by a Licensed ~~Remediation~~ Environmental Consultant that the corrective action costs incurred are true and correct and that the Licensed ~~Remediation~~Environmental Consultant supervised the corrective action performed accompanied with supporting documentation as set forth on the Purchase Order.

(4) Investigation and remediation work must be supervised/performed by a Licensed ~~Remediation~~Environmental Consultant. Reimbursement will be paid to the ~~Applicant~~ eligible person unless the ~~Applicant~~eligible person provides the Fund with a written "Assignment of Benefit" directing reimbursement be paid directly to an Assignee. Any revocation of "Assignment of Benefits" must be provided to ~~the~~ PSTD in writing. The Fund may also reimburse directly to a vendor engaged by PSTD for ancillary services deemed necessary to support a project upon presentation of a reimbursement request form accompanied by an original invoice.

(5) Investigation and remediation costs expended prior to submission of a release report to the Commission, shall not be eligible for Indemnity Fund reimbursement.

165:27-5-2. Application for reimbursement

An application for PSTD Eligibility on a confirmed release shall be made to the Administrator of the Indemnity Fund Program on applicable forms and at a minimum include:

(1) A properly completed "Indemnity Fund Application" form with all requested information provided.

(2) A sworn Non-Collusion and Non-Ownership/Participation Affidavit executed by both the ~~Applicant~~eligible person and the Licensed Environmental Consultant.

(3) A Leak Detection Data Sheet (if applicable) with supporting documents and other information verifying regulatory compliance at the time of the reporting of the release.

(4) Contract.

(5) Assignment of Benefits.

(6) Damage Statement ~~(I.A.)~~.

(7) Other Financial Mechanisms allowable besides the Indemnity Fund ~~(I.A.)~~.

(8) Information deemed sufficient by PSTD staff to substantiate a claim as an impacted party or adjacent property owner and a sworn statement that no other financial mechanisms were in place at the time of discovery of the release. ~~Applicant~~The eligible person must submit any and all property insurance policies to the Indemnity Fund in place at time of release.

(9) Any other information requested by ~~the~~ PSTD or Fund. When deemed warranted to support PSTD's charge to protect the public health, safety, and welfare, the Director of ~~the~~ PSTD may execute an Administrative Application to the Fund on behalf of an unavailable or unwilling owner.

SUBCHAPTER 7. REIMBURSEMENT

165:27-7-1. Reimbursable expenses

The Fund may reimburse eligible persons for:

(1) Reasonable, integral and necessary costs directly related to the corrective action. These costs may include but are not limited to such items as waste disposal, soil and groundwater remediation techniques, laboratory analyses, professional services, drilling, sampling, coring, transportation, etc.

(2) Backfill on active confirmed cases.

(3) Suspicion of release, and other costs deemed investigatory in nature.

(4) Costs that are reasonable, integral and necessary.

(5) Third Party property damage costs and medical costs that have been paid by ~~Applicant~~the eligible person as set forth in 17 O.S. 356.

165:27-7-2. Reimbursement

(a) Among other requirements an ~~applicant~~eligible person for reimbursement is required to show:

(1) Allowable costs were incurred on or after December 23, 1988.

(2) The PSTD has determined that the release or suspicion of release may pose a threat to human health or the environment.

(3) The eligible person has fully cooperated with PSTD in responding to the release.

(b) The Petroleum Storage Tank Division will reimburse from the Indemnity Fund an eligible person, with an eligible release from an eligible tank system allowable costs in excess of 1% co-pay not to exceed Five Thousand Dollars ($5,000.00) but not more than:

(1) One million five hundred thousand dollars ($1,500,000.00) per occurrence providing the storage tank is used in petroleum marketing or if the system has a throughput in excess of ten thousand (10,000) gallons per month based on annual throughput for the previous calendar year, (throughput to be established by clear and convincing documentary records that are deemed sufficient by PSTD staff) and

(A) Two ~~Million Dollars~~million dollars ($2,000,000.00) annual aggregate for owners of one to one hundred storage tank systems, or

(B) Three million dollars ($3,000,000.00) annual aggregate for owners ~~or operators~~ with more than one hundred storage tank systems or,

(2) Five hundred thousand dollars ($500,000.00) per occurrence providing the system is not used in petroleum marketing, or if the storage tank system has a throughput of ten thousand (10,000) gallons or less per month based on annual throughput for the previous calendar year, and

(A) Two million dollars ($2,000,000.00) annual aggregate for owners of one to one hundred storage tank systems or,

(B) Three million dollars ($3,000,000.00) for owners with more than one hundred storage tank systems.

(c) Reimbursement shall not be made from the Indemnity Fund pursuant to this Section until the Indemnity Fund Program has determined that the costs for which reimbursement is requested were incurred on behalf of an eligible person, of an eligible release from an eligible tank system and were reasonable, integral and necessary.

(d) Releases that occurred prior to June 4, 2004, shall not receive reimbursement until the $5,000.00 co-pay has been prepaid or a payment arrangement concerning the co-pay has been agreed to by PSTD and significant compliance with the payment agreement is achieved.

(e) All corrective action or assessment costs incurred shall be subject to reimbursement in accordance with unit cost pricing recommended by the Unit Cost Committee as approved by the PSTD Director and any adaptations, amendments or changes thereto.

(f) All corrective action costs incurred shall be subject to reimbursement that is deemed allowable, fair and reasonable by the PSTD.

(g) If the technology is available, PSTD will accept online submissions of documents meeting PSTD rules and requirements.

165:27-7-6. Conditions for reimbursement

(a) Action taken as a result of an eligible release, other than in an emergency, may be made by competitive bid of at least two (2) bidders. When a requirement for bidding is made by PSTD, all bids received shall be forwarded to PSTD and the bid results discussed between the responsible person, PSTD and the environmental consultant. Acquisition or contracts or subcontracts for corrective action or for labor or equipment which exceed Two Thousand Five Hundred Dollars ($2,500.00) from any one vendor or subcontractor for any one site shall be awarded to the lowest or best bidder as determined by PSTD. Professional engineering, geological, land surveying and other professional services or services provided by a PSTD Licensed ~~Remediation~~Environmental Consultant required for investigation and the preparation of work plan and/or purchase orders, proposed corrective action plans and oversight of remediation will be reimbursed at current approved reasonable costs, or at the PSTD Director's discretion.

(b) When current costing systems cannot accommodate specific situations, contracts awarded shall be to the lowest or best bidder. The Indemnity Fund Program requires review and approval of all competitive bid actions.

(c) The ~~owner/applicant~~owner/eligible person and Licensed ~~Remediation~~Environmental Consultant shall keep, and have available for review by the Indemnity Fund Program, records pertaining to the corrective action. These records include but are not limited to:

(1) Corrective action plans.

(2) Remedial action plans

(3) Contracts and contract negotiations.

(4) Accounts

(5) Invoices

(6) Sales tickets

(7) Subcontractor invoices

(8) Other forms of documentation for expenses incurred relating to such investigation, corrective action, remedial action, injury or damage.

(d) All records of costs incurred shall be certified by affidavit as true and correct and shall contain invoice dates, invoice numbers and amount of invoices being submitted.

(e) Reimbursement shall be made by the Fund only for costs that ~~the~~ PSTD determines were actually incurred, were reasonable, allowable and are integral and necessary towards the corrective action performed.

(f) An ~~Applicant~~eligible person with a release or whose property has been impacted by a release, shall not retain an environmental consulting firm to perform remediation in which the Applicant has more than a 10% interest.

(g) An ~~Applicant~~eligible person shall provide application information that will enable the Fund to determine which reimbursement method to use.

(1) Initial, supplemental and final payments. ~~Applicants~~An eligible person may submit an Initial Reimbursement Request and periodic Supplemental Reimbursement Requests followed by a Final Reimbursement Request after case closure if they:

(A) Make application within two years from the date of a closure letter issued by PSTD.

(B) Been determined to be eligible (eligible person, eligible release, eligible tank system) to access the Fund.

(2) An application for eligibility and all claims for reimbursement to the Fund must be made within two (2) years of the case closure letter issued by the PSTD or the date the Final Claim Confirmation form is received by the PSTD. Eligible persons are encouraged to submit claims for reimbursement as the costs are incurred and in the order incurred.

165:27-7-9. The Pre-Approval Program

(a) The purpose of the Pre-Approval Program is to reduce, if not eliminate, disallowances of reimbursement for costs incurred and associated with corrective action, as well as to foster a spirit of cooperation between the Licensed ~~Remediation~~Environmental Consultant, ~~the~~ PSTD and the ~~responsible~~eligible person.

(b) Parties are required to use either or both of the two pre-approval processes developed by PSTD. These two procedures are: Purchase Orders and Pay-For-Performance (PFP). These procedures document the agreement that all parties have reached and must comply with.

(c) ~~A responsible~~An eligible person may opt out of the pre-approval program if the responsible person elects, in writing after consultation with the Administrator of the Indemnity Fund, not to participate in the pre-approval program and acknowledges in writing that the ~~responsible~~eligible person understands that all requests for reimbursement submitted without pre-approval will be subject to non-reimbursement of costs incurred which do not meet the statutory standards for reimbursement set forth in 17 O.S. § 350 et seq.

165:27-7-11. Purchase order procedures

(a) Purchase order proposals are designed for pre-approval of work that is to be performed. Purchase orders shall not be issued on work that has been completed without pre-approval.

(1) All purchase orders must use the appropriate standardized method for a particular scope of work.

(2) All purchase order ~~proposals~~requests must be ~~signed~~submitted online by the Licensed ~~Remediation~~Environmental Consultant ~~and submitted as original documents using the PSTD designated forms and format~~.

(3) All purchase order ~~proposals~~requests submitted ~~to and receipted by PSTD~~ will be reviewed and responded to within 30 days.

(4) If the purchase order ~~proposal~~request is approved as submitted, ~~technical and accounting~~PSTD staff will ~~sign the proposal and send approved copies to~~notify the Licensed ~~Remediation~~Environmental Consultant and ~~responsible~~eligible person with the assigned purchase order number and a list of the required documents that will support the completed scope of work as described in the purchase order proposal at the agreed upon price.

(5) If the purchase order ~~proposal~~request is not approved as submitted, ~~the~~ PSTD ~~Technical~~ staff will contact the Licensed ~~Remediation~~Environmental Consultant or ~~responsible~~eligible person concerning the necessary changes required or will schedule a meeting, if needed.

(A) The Licensed ~~Remediation~~Environmental Consultant ~~or responsible person~~ will then make the agreed revisions and ~~submit~~resubmit online the final ~~signed and dated~~ purchase order to ~~the~~ PSTD.

(B) When PSTD ~~Technical~~ staff recommends revisions to the purchase order ~~proposal~~request, the Licensed ~~Remediation~~Environmental Consultant or ~~responsible~~eligible person will have 30 days from notification of revisions to respond and submit a final purchase order proposal. If the consultant or ~~responsible~~eligible person does not respond within 30 days, the purchase proposal as originally submitted is void.

(C) Unless agreed upon by PSTD, the ~~responsible~~eligible person and the Licensed ~~Remediation~~Environmental Consultant, in writing, any purchase orders that have not been completed and submitted for payment within 120 days after the scope of work completion date are null and void.

(6) In the event the Licensed ~~Remediation~~Environmental Consultant, ~~responsible~~ eligible person, and PSTD cannot agree upon reasonable terms, the purchase order ~~proposal~~request shall be void and the following shall apply:

(A) Work will then proceed on a Work Plan basis with documentation, as provided for in 17 O.S. § 356(D), required for reimbursement; and

(B) Multiple submissions of purchase orders for the same or similar scopes of work will only be considered at the discretion of ~~the~~ PSTD.

~~(7) The PSTD will review only one revision of a purchase order proposal.~~

(b) Change orders must be submitted prior to performing work not included in the scope of work set forth in the approved purchase order, which will require pre-notification to and pre-approval by the Technical staff, unless the total additional costs are less than 5% of the approved purchase order. Documentation will be required to explain additional work completed and to justify additional costs. All requests for reimbursement of costs not incurred in the approved purchase order will be reviewed at the discretion of the Fund.

(c) Reimbursement format and requirements for purchase orders include the following:

(1) All scope(s) of work described in the approved purchase order must be completed in full before reimbursement is requested, unless other payment terms are

pre-approved by the PSTD and set forth with specificity in the purchase order.

(2) All purchase orders being submitted for reimbursement will contain:

(A) A copy of the approved purchase order (and change order, if applicable).

(B) Required documentation.

(d) Reimbursement claims on purchase orders will be paid within 30 days of receipt.

(e) The Licensed ~~Remediation~~Environmental Consultant, ~~responsible~~eligible person or both may make application for an Administrative Application for hearing to determine terms and conditions of purchase order approval.

SUBCHAPTER 9. ADMINISTRATIVE PROVISIONS

165:27-9-1. Hearing, orders, and appeals

(a) Hearings and appeals to enforce the provisions of this Chapter shall be conducted in accordance with ~~the Commission's Rules of Practice(OAC 165:5)~~Chapter 5 of Commission rules shall be before an Administrative Law Judge on the PSTD Docket.

(b) The Commission shall issue such orders as it deems necessary to enforce the provisions of this Chapter to protect human health and the environment within the State of Oklahoma.

165:27-9-2. Changes to rules

The adoption of this Chapter shall not preclude the PSTD from subsequently altering, amending, or changing the rules in whole or in part after proper notice and hearing pursuant to ~~the OAC 165:5~~Chapter 5 of Commission rules. ~~The PSTD may alter, amend, or change this Chapter upon application of any person or upon its own application.~~

[OAR Docket #15-442; filed 6-11-15]

TITLE 165. CORPORATION COMMISSION CHAPTER 29. ~~REMEDIATION~~CORRECTIVE ACTION OF PETROLEUM STORAGE TANK RELEASES

[OAR Docket #15-443]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
Part 1. Purpose and Statutory Authority
165:29-1-1. Purpose [AMENDED]
165:29-1-2. Contents [AMENDED]
165:29-1-3. Authority [AMENDED]
Part 3. Definitions
165:29-1-11. Definitions [AMENDED]
Part 5. Scope of Rules
165:29-1-21. Overview of applicability and enforcement [AMENDED]
Part 7. National Industry Codes
165:29-1-32. Incorporated codes and standards [AMENDED]
Subchapter 3. Release Prevention, Detection and Correction
Part 1. Release Prohibition, Reporting, and Investigation
165:29-3-1. Release prohibition [AMENDED]
165:29-3-2. Release reporting [AMENDED]
165:29-3-3. Release investigation; confirmed release; suspected release; emergency suspected release and release reporting [AMENDED]
Part 3. Removal and Closure of Petroleum Storage Tank Systems
165:29-3-65. Assessing the site at closure or change in service [AMENDED]
Part 5. Corrective Action Requirements
165:29-3-71. General applicability; exception [AMENDED]
165:29-3-74. Initial abatement measures and site check [AMENDED]
165:29-3-76. Tier 1A ORBCA [AMENDED]
165:29-3-80. Remedial Action Plan [AMENDED]
Part 7. Licensing for ~~Remediation~~Environmental Consultants
165:29-3-90. Licensing for ~~Remediation~~Environmental Consultants involved with closures, investigation and the remediation of releases from underground or aboveground storage tanks [AMENDED]
Subchapter 5. Administrative Provisions
165:29-5-1. Hearings, orders and appeals [AMENDED]
165:29-5-3. Notices [REVOKED]
AUTHORITY:
The Commission's statutory authority is found in 17 O.S. §§ 306, 307, 321.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
n/a
COMMENT PERIOD:
October 30, 2014 to January 16, 2015
PUBLIC HEARING:
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ADOPTION:
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SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 13, 2015
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 8, 2015
FINAL ADOPTION:
June 8, 2015
EFFECTIVE:
August 27, 2015
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
Incorporated standards:
Incorporation of various standards of the following organizations are added or revised:
National Fire Protection Association
American Petroleum Institute
National Association of Corrosion Engineers
Underwriter's Laboratory
American Society for Testing and Materials
Petroleum Equipment Institute
Steel Tank Institute
Factory Mutual
Association of Composite Tanks
National Leak Prevention Association
National Water Well Association
U.S. Environmental Protection Agency Office of Water
Incorporating rules:
165:29-1-32
Availability:
8:00 am to 4:30 pm
Oklahoma Corporation Commission
Office of Petroleum Tank Division
4th Floor, Jim Thorpe Bldg.
2101 N. Lincoln Blvd., Oklahoma City
ANALYSIS:
The rules regarding a confirmed release were re-written to avoid confusion over who may establish a confirmed release. Various definitions were already defined statutorily and were unnecessarily repeated in the rules or were obsolete. Certain definitions were established to identify terms used

in statute. The title of the licensee was changed to reflect present realities. The determination of which agency was responsible for co-mingled releases was established in DEQ as a hazardous substance release is regulated by DEQ and may pose an immediate threat to human health, safety, welfare, the environment and the state economy.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 1. GENERAL PROVISIONS

PART 1. PURPOSE AND STATUTORY AUTHORITY

165:29-1-1. Purpose

The purpose of this Chapter is to provide a comprehensive program for the regulation of petroleum storage tank systems in Oklahoma to prevent, contain, abate, and remove pollution harmful to the public health, safety,~~or~~ welfare ~~or~~and the environment~~ caused by leaking petroleum storage tank systems~~.

165:29-1-2. Contents

This Chapter sets forth specific requirements for corrective action of releases including the investigation,~~and correction of releases, including~~ site assessment, cleanup, public notice, and monitoring of systems~~ by the Commission or its designated agent(s)~~.

165:29-1-3. Authority

(a) 42 U.S.C.A. § 6991 et seq., permits the State to submit a petroleum storage tank regulatory program for review and approval by the Administrator of the United States Environmental Protection Agency ("EPA"). EPA approved Oklahoma's petroleum storage tank program on 8/12/92.

(b) 17 O.S. § 305 authorizes the Oklahoma Corporation Commission to administer Subtitle I of Title VI of the Solid Waste Disposal Act (42 U.S.C.A. § 6901 et seq.).

(c) 17 O.S. § 306 requires the Oklahoma Corporation Commission to promulgate and enforce rules to carry out the provisions of the Oklahoma Petroleum Storage Tank Regulation Act (17 O.S. § 301 et seq.).

(d) ~~27A O. S. § 1-3-101 grants jurisdiction to the~~The Oklahoma Corporation Commission has jurisdiction over ~~underground and aboveground~~ storage tanks that contain antifreeze, motor oil, motor fuel, gasoline, kerosene, diesel, or aviation fuel.

PART 3. DEFINITIONS

165:29-1-11. Definitions

In addition to the terms defined in 17 O.S. § 303, the following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:

"ANSI" means the American National Standards Institute.

"API" means the American Petroleum Institute.

"ASTM" means the American Society for Testing and Materials.

"Abandoned system" means a storage tank system that has not been removed but has been taken out of service and is not intended to be returned to service, or that has been rendered permanently unfit for use as determined by the Commission, including all tanks closed prior to April 21, 1989.

~~**"Aboveground storage tank"** or **"AST"** means any stationary tank that is not included within the definition of an underground storage tank in OAC 165:25-1-11, which is designed to contain, without structural support of earthen material, PSTD regulated substances.~~

~~**"Aboveground storage tank system"** means an aboveground storage tank and any connected aboveground or underground piping, dispensers and associated equipment and fixtures.~~

"Aboveground release" means any release to the surface of the land or to surface water. It includes, but is not limited to, releases from the aboveground portion of an underground storage tank system and aboveground releases associated with overfills and transfer operations as the regulated substance moves to or from an underground storage tank system.

"Agent" means a person authorized by another to act on their behalf, either out of employment or contract.

"Aquifer" means a formation that contains sufficient saturated, permeable material to yield significant quantities of water to wells and springs. This implies an ability to store and transmit water for beneficial uses.

"Ancillary equipment" means any device including, but not limited to, devices such as piping, fittings, flanges, valves, and pumps that are used to distribute, meter, or control the flow of regulated substances to or from a petroleum storage tank.

"Backfill" refers to only the material placed in the excavation zone to support the petroleum storage tank system.

"Belowground release" means any release to the subsurface of the land or to groundwater. It includes, but is not limited to, releases from belowground portions of petroleum storage tank systems and belowground releases associated with overfills and transfer operations as the regulated substance moves to or from underground storage tank systems. "Belowground release" does not include releases to a secondary containment system.

"Beneath the surface of the ground" means beneath the ground's surface or otherwise covered with materials so that physical inspection is precluded or impaired.

"Beneficial uses" means a classification of the waters of the State, according to their best uses in the interest of the public.

~~**"CASRN"** means Chemical Abstracts Service Registry Number.~~

~~**"CERCLA, "** also known as **"Superfund, "** means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C.A. § 9601 et seq., and any amendments thereto.~~

"COC" means Chemical of Concern.

"Commission" means the Oklahoma Corporation Commission and includes its designated agents or representatives.

"Compatible" means the ability of two or more substances to maintain their respective physical properties upon contact with one another for the design life of the petroleum storage tank system under conditions likely to be encountered in the system.

"Confirmed Release" means a release of petroleum from a regulated storage tank system resulting in levels of chemicals of concern in native soils and/or groundwater that exceed state action levels to which a PSTD case number is assigned and further corrective action is required.

"Contaminants" or **"contamination"** means concentrations of ~~chemicals~~regulated substances or dissolved compounds therefrom at levels that may cause adverse human health or environmental effects ~~and/or nuisance conditions~~.

"Corrective action" means action taken to assess, monitor, minimize, eliminate or clean up a release from a storage tank system.

"Corrective Action Plan" means any plan submitted to the Division detailing the method and manner of corrective action to be taken for a release.

"DAF" means Dilution Attenuation Factor.

"DEQ" means the Oklahoma Department of Environmental Quality.

"DWS" means Drinking Water Standards.

"de minimis" means, for the purposes of this Chapter, very small, as in very small amounts or concentrations of regulated substances.

"Dielectric material" means a material that does not conduct direct electric current. Dielectric coatings are used to electrically isolate underground storage tank systems from the surrounding area. Dielectric bushings are used to electrically isolate portions of the underground storage tank system (e.g., tank from piping).

"Dilution Attenuation Factor" or **"DAF"** means a unitless number greater than or equal to unity and represents the ratio of dissolved phase concentration at a downgradient location to the concentration at an upgradient location. It represents the reduction in concentration due to the combined influence of several factors (diffusion, dispersion, adsorption, decay, volatilization). It is applicable for all media, but is most commonly used for the unsaturated and saturated zones. DAF is generally estimated using a fate and transport model or based on site-specific data.

"Director" means the Director of the Petroleum Storage Tank Division of the Corporation Commission.

"Division" means the Petroleum Storage Tank Division of the Corporation Commission.

"EPA" means the United States Environmental Protection Agency.

"Electrical equipment" means underground equipment that contains dielectric fluid necessary for the operation of equipment such as transformers and buried electric cable.

"Environment" means any water, water vapor, any land including land surface or subsurface, fish, wildlife, air and atmosphere, and all other natural resources.

"Environmental experience" means work-related experience in any type of activities associated with soil, water or atmosphere impacted or potentially impacted by a hazardous substance.

"Excavation zone" means the volume containing the underground storage tank system and backfill materials, bounded by the ground surface, walls, and floor of the pit and trenches into which the underground storage tank system is placed at the time of installation.

"Facility" means any location or part thereof ~~containing~~consisting of one or more petroleum storage tanks or systems containing regulated substances.

"Flow-through process tank" means a tank that forms an integral part of a production process through which there is a steady, variable, recurring or intermittent flow of material during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction to the process or for the storage of finished products or by-products from the production process.

"FOC" means fraction organic carbon content.

"Fraction organic carbon content" or **"FOC"** means the fraction of organic carbon in soil that influences the adsorption of organic chemicals. It can be estimated in soils using high temperature combustion and oxidation techniques such as ASTM method D2974.

"Free product" means a regulated substance that is present as a non-aqueous phase liquid (e.g., liquid not dissolved in water).

"Fresh groundwater" means groundwater with total dissolved solids (TDS) less than five thousand (5,000) parts per million.

"Fund" means the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund.

"Gathering lines" means any pipeline, equipment, facility, or building used in the transportation of oil or gas during its production or gathering operations.

"Groundwater" means that part of water that is below the water table.

"Half-life" means the time required for the decay or transformation of one half of the amount of a chemical.

"Hazard Index" means the sum of the Hazard Quotients.

"Hazard Quotient" means the estimated dose, or intake, for a specific chemical and a specific pathway, divided by the Reference Dose (RfD).

~~**"Hazardous substance"** means ethylene glycol based antifreeze, motor oil, motor fuel, gasoline, diesel, aviation fuel and blending material used in motor fuels.~~

"Impervious barrier" means a barrier of sufficient thickness, density, and composition that is impenetrable to the regulated substance, has a permeability of at least 1×10^{-6} cm/sec., and will prevent the discharge to the environment of any regulated substance for a period of at least as long as

the maximum anticipated time during which the regulated substance will be in contact with the impervious material.

"In service" means a petroleum storage tank that is not abandoned, or could contain regulated substances, and/or has regulated substances regularly added to or withdrawn from it.

"Inventory controls" means techniques used to identify a loss of regulated substances that are based on volumetric measurements in the tank and reconciliation of those measurements with product delivery and withdrawal records.

"Licensed ~~Remediation~~Environmental Consultant" means an individual who has a current license issued by the Petroleum Storage Tank Division to perform corrective action.

"Liquid trap" means sumps, well cellars, and other traps used in association with oil or gas production, gathering, and extraction operations (including gas production plants) to collect oil, water, and other liquids. Liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

"MCL" means Maximum Contaminant Level.

"MtBE" means methyl tertiary butyl ether.

"Maintenance" means the normal operational upkeep necessary to prevent a petroleum storage tank system from releasing product.

"Motor fuel" means any petroleum or petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any grade of gasohol, and is typically used in the operation of a motor engine.

"Monitor well" means a piezometer or other cased and screened excavation, boring or drilled hole installed in any way that can be used for the continuous or periodic evaluation of groundwater quality or the detection of soil vapors.

"NACE" means the National Association of Corrosion Engineers.

"NFPA" means the National Fire Protection Association, Inc.

"NPDES" means the National Pollutant Discharge Elimination System.

~~**"Nuisance conditions"** means unpleasant odors, unpleasant visual impacts or other observable aesthetic impacts as determined by the Commission.~~

"Occurrence" means the release of a PSTD regulated substance into the soil or groundwater. Each PSTD regulated substance will be treated as one occurrence regardless of the composition of the substance released. Separate occurrences of the same PSTD regulated substance may be allowed if evidence establishes that the PSTD regulated substance occurred in two different tank systems locations, are separated by time, or both.

"ORBCA" or **"Oklahoma Risk-Based Corrective Action"** means a scientific risk-based analysis that governs petroleum storage tank site assessment and remediation. It determines acceptable concentration levels of petroleum constituents in order to protect the public health, safety or welfare or the environment.

"OSDA" means the Oklahoma State Department of Agriculture.

"OWRB" means the Oklahoma Water Resources Board.

"Observation Well" means a cased and screened boring or drilled hole, installed within the tank excavation or piping trench that can be used for the continuous or periodic evaluation of groundwater quality or the detection of soil vapors as a method of release detection.

"Operational life" means the period beginning from the time installation of the tank or system is commenced until it is properly closed or removed as provided for in this Chapter.

~~**"Operator"** means any person in control of or having responsibility for the daily operation of the petroleum storage tank system, whether by lease, contract, or other form of agreement. The term also includes a past operator at the time of a release or violation of state statutes or Commission rules.~~

~~**"Out of service"** means a petroleum storage tank or system that:~~

~~(A) Is not in use (i.e., does not have regulated substances added to or withdrawn from the tank system); and~~

~~(B) Is intended to be placed back in service.~~

"Overfill" means a release that occurs when a petroleum storage tank is filled beyond its capacity, resulting in a discharge of regulated substance to the environment.

~~**"Owner"** means any person who holds title to, controls, or possesses an interest in a storage tank system or a piece of property that has a storage tank system for the storage, use, or dispensing of PSTD regulated substances. In the case of a petroleum storage tank system no longer in place, the term "owner" also means any person who held title to, controlled, or possessed an interest in a storage tank system immediately before it's decommissioning. The term "owner" does not include a person who holds an interest in a tank system solely for financial security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the system.~~

"PEI" means the Petroleum Equipment Institute.

"POC" means Point of Compliance.

"POE" means Point of Exposure.

"PSI" means pounds per square inch.

"PSTD" means Petroleum Storage Tank Division or Division.

"Pay-for-Performance (PFP)" means a process where an environmental consulting company (Consultant) guarantees by signing a mutual agreement (the contract) that a release of a regulated substance will be remediated to COC levels agreed to by the PSTD and the Consultant that are protective of human health, safety and the environment. This performance-based process encompasses several steps, but is not limited to the contract signed by an officer/owner of the environmental consulting company, the applicant and the Administrator of the Indemnity Fund and an agreed to reasonable price. Scheduled payments are distributed only as performance-based goals are attained.

"Permanent out of use" or "POU" means a petroleum storage tank system that is not in service/use, does not contain regulated substances, and is not intended to be placed back in service/use.

~~**"Person"** means any individual, trust, firm, joint stock company or corporation, limited liability company, partnership, association, any representative appointed by order of a court, the state, any municipality, county, school district or other political subdivision or agency of the state, or any interstate body. The term also includes a consortium, joint venture, commercial entity, the United States Government, a federal agency, including a government corporation, or any other legal entity.~~

~~**"Person in charge"** means the owner or person designated by the owner, the operator, or permittee as the one with direct supervisory responsibility for an activity or operation at a petroleum storage tank system or facility, such as the transfer of regulated substances to or from any points at a facility.~~

"Petroleum" means antifreeze, motor oil, gasoline, diesel, aviation fuel, and/or volatile blending materials used in motor fuels, like kerosene and ethanol and used oil.

"Pipe" or **"Piping"** means a hollow cylinder or tubular conduit constructed of non-earthen materials.

"Pipeline facilities" means new and existing pipe rights-of-way and any equipment, facilities, or buildings regulated under:

(A) The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. § 1671, et seq.).

(B) The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. § 2001, et seq.).

(C) The State Hazardous Liquid Transportation System Safety Act, § 47.1 et seq. of Title 52 of the Oklahoma Statutes.

(D) Intrastate pipeline facilities regulated under state laws.

"Point of Compliance" means a select location where the concentration of a chemical released must be at or below back-calculated levels. The back-calculated levels are such that estimated concentrations at the Point of Exposure are below health-based levels.

"Point of Exposure" means a location at which an individual or population may be exposed to site-specific Chemicals of Concern through ingestion, inhalation and/or dermal contact.

"Pollution" means contamination or other alteration of the physical, chemical or biological properties of any natural waters of the state, or contamination or alteration of the physical, chemical or biological properties of the land surface or subsurface, when such contamination or alteration will or is likely to create a nuisance or render the waters or land harmful to the public health, safety or welfare, or the environment.

~~**"Polyvinyl chloride"** means a thermoplastic resin.~~

"Positive sampling, testing, or monitoring results" means the results of sampling, testing, or monitoring using any of the release detection methods described in this Chapter that indicate a release from a petroleum storage tank system may have occurred.

"Potency Factor" means the plausible upper-bound estimate of the probability of a response (cancer) per unit intake of chemical over a lifetime. Also referred to as Slope Factor.

"RBCA" means Risk-Based Corrective Action.

~~**"RCRA"** means the Resource Conservation and Recovery Act of 1976, 42 U.S.C.A. §§ 6912, 6991(a) through (f), and 6991(h), and any amendments thereto.~~

"RfD" means Reference Dose.

"Reasonable Maximum Exposure" or **"RME"** means the highest rate of exposure that has a small probability (5 percent) of being exceeded.

"Reference Dose" or **"RfD"** means the estimate of the daily intake of a chemical over a lifetime that is not likely to result in any significant adverse health effects (including in sensitive subpopulations).

"Regulated substances" or **"product"** means hazardous substances or petroleum regulated by PSTD.

~~**"Regulatory contact"** means the person or company with whom the PSTD is working in its regulatory capacity to correct a problem. It could be the current owner, past owner, operator or volunteer. The term denotes a functional role instead of one with legal significance. It is the person or company with whom the Division is working to get something done, and not necessarily the person a court would consider legally responsible for the problem.~~

"Release" means any spilling, overfilling, or leaking from a storage tank system that goes beyond the excavation zone, tankpit, or secondary containment facility into the native environment or any concentrations of a regulated substance that as determined by the PSTD poses a threat to human health or the environment.

"Release detection" means the methodology used in determining whether a release of regulated substances has occurred from a petroleum storage tank or system into the environment or into the interstitial area between the petroleum storage tank system and its secondary barrier.

"Remediation" process or technique used to reduce concentration levels of regulated substances in the soil and groundwater, and, or to reduce the presence of free product in the environment to levels that are protective of human health, safety and the environment. Generally remediation activities are scheduled after the site assessment is complete and the Remedial Action Plan (RAP) has been approved.

"Repair" means to restore a tank or petroleum storage tank system component to PSTD standards that has caused a release of regulated substances from the petroleum storage tank system.

"Reportable Quantity" or **"RQ"** means the amount of a hazardous substance release required to be reported to appropriate federal, state, and/or local officials.

"Residual Product" Petroleum hydrocarbons (product) that are absorbed or otherwise bound to geological materials (sand, silt, or clay) in any soil zone (vadose, capillary, or saturated zone), in such a manner that ground water in contact with the residual product or beneath the residual product is not contaminated with any petroleum constituent regulated by the OCC.

"Risk-Based Corrective Action" means all of the activities necessary to manage a site such that concentrations of chemicals from a release are at levels that are not detrimental to public health and the environment. It includes, but is not limited to, collection of site-specific data, analysis of the data

to quantify the risk, comparison of the risk with acceptable levels, and implementation of engineering and non-engineering measures to ensure that concentrations of remaining Chemicals of Concern are not detrimental to human health.

~~**"SARA"** means the Superfund Amendments and Reauthorization Act of 1986.~~

"SCL" means Soil Cleanup Level.

"STI" means the Steel Tank Institute.

"Sacrificial anode" means a device used to reduce or prevent corrosion of a metal in an electrolyte by galvanic coupling to a more anodic metal.

"Saturated zone" means a subsurface zone below which all pore space is filled with water.

"Slope Factor" means the plausible upper-bound estimate of the probability of a response (cancer) per unit intake of chemical over a lifetime. Also referred to as Potency Factor.

"Smear Zone" Any soil zone containing petroleum hydrocarbons that can contaminate ground water in contact with the petroleum hydrocarbons or ground water beneath the petroleum hydrocarbons with petroleum constituents regulated by the PSTD.

"Soil zone" means and includes, but is not limited to, vadose zone, capillary fringe, or saturated soil zone.

"Source of contamination" means the location of the highest concentration of chemical contaminants in soil and groundwater.

"Source of release" means the location where regulated substances from a regulated tank system entered the environment.

"Spill" means a release that occurs during transfer operations of regulated substances to or from a petroleum storage tank system, resulting in a discharge of such substances into the environment.

"Storage Tank System" means one or a combination of tanks, including piping, hoses, dispensers and other system equipment used to contain regulated substances.

"Stormwater collection system" or **"wastewater collection system"** means piping, pumps, conduits, and any other equipment necessary to collect and transport surface water runoff resulting from precipitation or domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of stormwater and wastewater does not include treatment except where incidental to conveyance.

"Surface impoundment" means a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) that is not an injection well.

"Suspected release (SOR)" means an event has occurred that establishes a reasonable basis to believe a release from a petroleum storage tank system may have occurred.

"TCLP" means toxicity characteristic leaching procedure, a test procedure for determining if a solid waste is hazardous because it exhibits toxicity characteristics as enforced under Resource Conservation and Recovery Act.

"TDS" means Total Dissolved Solids.

"TPH" means Total Petroleum Hydrocarbon(s).

"Target Risk Level" means the level set by the Oklahoma Corporation Commission that must be achieved at each site prior to a risk-based closure of the site. For example, for current receptors this level has been set at 1E-06 (one-in-a-million) and a Hazard Quotient of less than 1.0 (one).

"Temporary out of use" or "TOU" means the status of a petroleum storage tank system that has been taken out of service/use but not removed with the intent to return to service.

"Transporter" means any person who transports, delivers, or distributes any quantity of regulated substance from one point to another.

"UL" means Underwriter's Laboratory.

"USGS" means the United States Geological Survey.

"Usable groundwater" means fresh groundwater that may be produced from an aquifer for beneficial uses.

~~**"Underground area"** means an underground room such as a basement, cellar, shaft, or vault that provides enough space for physical inspection of the exterior of a tank situated on or above the surface of the floor.~~

~~**"Underground storage tank"** or **"UST"** means a regulated storage tank that has 10 percent or more of its volume beneath the surface of the ground.~~

~~**"Underground storage tank system"** means an underground storage tank and any connected aboveground or underground piping, dispensers, and ancillary equipment.~~

"Unsaturated zone" or **"vadose zone"** means the subsurface zone containing water under pressure less than that of the atmosphere, including water held by capillary forces within the soil, and containing air or gases generally under atmospheric pressure. This zone is limited by the ground surface and the upper surfaces of the water table.

~~**"Vault"** means an underground compartment used to house a storage tank system. It must be large enough for a person to visually inspect all areas around the storage tank.~~

~~**"Wastewater treatment tank"** means a tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods.~~

"Waters of the State" means all bodies or accumulations of water, surface and/or underground, natural or artificial, and public or private, which are contained within, flow through, or border upon any part of the State of Oklahoma or any portion thereof.

PART 5. SCOPE OF RULES

165:29-1-21. Overview of applicability and enforcement

This Chapter applies to the containment, control, abatement, and removal of releases of regulated substances from any petroleum storage tank system that causes pollution harmful to the public health, safety,~~or~~ welfare ~~or~~and the environment of the State of Oklahoma, regardless of whether the release occurs within or outside of the State.

PART 7. NATIONAL INDUSTRY CODES

165:29-1-32. Incorporated codes and standards

Specific references to documents listed in (1) through (13) below are made throughout this Chapter. Each of these documents or parts thereof are adopted and incorporated by reference as standards, but only to the extent that they are specifically referenced in this Chapter. These rules will supercede in any conflict between these rules and any standard. These codes and standards will be updated periodically through a formal rulemaking procedure initiated by PSTD to reflect any substantive or relevant changes.

(1) National Fire Protection Association Standards:

(A) Standard Number 30, ~~1999~~2015, "Flammable and Combustible Liquids Code."

(B) Standard Number 329, ~~1999~~2010, "Underground Leakage of Flammable and Combustible Liquids."

(C) Standard Number 385, ~~1990~~2012, "Tank Vehicles for Flammable and Combustible Liquids."

(D) Standard Number 321, 1991, "Basic Classification of Flammable and Combustible Liquids."

(E) Standard Number 327, 1993, "Cleaning or Safeguarding Small Tanks and Containers."

(F) Standard Number 30A, ~~1996, "Automotive and Marine Service Station Code"~~2015,"Motor Fuel Dispensing Facilities and Repair Garages".

(2) American Petroleum Institute Standards:

(A) Recommended Practice 1615, 1996, "Installation of Underground Petroleum Storage Systems."

(B) Recommended Practice 1632, ~~1996~~2002, "Cathodic Protection of Underground Storage Tank and Piping Systems."

(C) Recommended Practice 1604, ~~1996, "Removal and Disposal of Used Underground Service Station Tanks"~~R2010, "Closure of Underground Petroleum Storage Tanks, 3rd Edition".

(D) Recommended Practice 1631, ~~1997, "Interior Lining of Underground Storage Tanks"~~ 2001, "Interior Lining and Periodic Inspection of Underground Storage Tanks".

(E) Recommended Practice 1621, ~~1993~~2001, "Bulk Liquid Stock Control at Retail Outlets."

(F) Recommended Practice 1626, ~~1993~~2010, "Storing and Handling Ethanol and Gasoline - Ethanol Blends at Distribution Terminals and Service Stations."

(G) Recommended Practice 1627, 1993, "Storing and Handling of Gasoline - Methanol/Cosolvent Blends at Distribution Terminals and Service Stations."

(H) Publication 1628, 1996, "A Guide to the Assessment and Remediation of Underground Petroleum Releases."

(I) Publication 2200, ~~1994~~2010, "Repairing Crude Oil, Liquified Petroleum Gas, and Product Pipelines, 4th Edition".

(J) Publication 2015, ~~1994, "Cleaning Petroleum Storage Tanks"~~2001, "Requirements for Safe Entry and Cleaning of Petroleum Storage Tanks".

(3) National Association of Corrosion Engineers:

(A) Standard Number ~~RP-0169-92~~SP0169-2013, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems."

~~(B) Standard Number RP-0184-94, "Repair of Lining Systems."~~

(~~C~~B) Standard Number ~~RP-0285-95, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems"~~SP0285-2011, "External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection".

(~~D~~C) Standard Number ~~RP-0286-97, "The Electric Isolation of Cathodically Protected Pipelines"~~SP0286-2007, "Electrical Isolation of Cathodically Protected Pipelines".

(4) Underwriter's Laboratory Standards:

(A) Standard UL58, ~~8th Edition, 1986~~9th Edition, 1996, "Steel Underground Tanks for Flammable and Combustible Liquids."

(B) Standard UL1316, ~~2nd Edition, 1996, "Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products"~~Bulletin - 2013, "Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohols, and Alcohol-Gasoline Mixtures".

(C) Standard UL1746, ~~2nd Edition, 1993~~Bulletin-2013, "External Corrosion Protection Systems for Steel Underground Storage Tanks."

(D) Standard UL567, ~~7th Edition, 1996~~Bulletin-2012, ~~"Pipe Connectors for Flammable and Combustible Liquids and LP Gas"~~"Emergency Breakaway Fittings, Swivel Connectors and Pipe-Connection Fittings for Petroleum Products and LP-Gas".

~~(5) American Society for Testing and Materials:~~

~~(A) Standard D-4021-92, "Standard Specifications for Glass Fiber Reinforced Polyester Underground Petroleum Storage Tanks."~~

~~(B) Standard ES-40-94 "Emergency Standard Practice for Alternative Procedures for the Assessment of Buried Steel Tanks Prior to the Addition of Cathodic Protection."~~

(5) Petroleum Equipment Institute PEI/RP 100 (2011 Edition), "Recommended Practices for Installation of Underground Liquid Storage Systems."

~~(6) Petroleum Equipment Institute PEI/RP-100-97, "Recommended Practices for Installation of Underground Liquid Storage Systems."~~

(6) Steel Tank Institute F894, ACT-100, "Specification for External Corrosion Protection of FRP Composite Underground Steel Storage Tanks 2006".

~~(7) Steel Tank Institute STI-F894-99, "Specification for External Corrosion Protection of FRP Composite Underground Steel Storage Tanks".~~

(7) Factory Mutual 1920 (2007), "Pipe Coupling and Fitting for Aboveground Fire Protection Systems".

~~(8) Association of Composite Tanks, ACT-100, "Specifications for the Fabrication of FRP Clad/Composite Underground Storage Tanks."~~
~~(9) Factory Mutual 1920 "Flexible Pipe Couplings".~~
(~~10~~8) National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension, Existing Steel UST by Lining Without Additional Cathodic Protection."
(~~11~~9) National Water Well Association, 1986, "RCRA Ground Water Monitoring Technical Enforcement Guidance Document (TEGD)."
(~~12~~10) American Society for Testing and Materials, ASTM Designation: E 1739-95 (2010) E1, "Standard Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites."
(~~13~~11) U.S. Environmental Protection Agency Office of Water, 1997, Drinking Water Advisory: Consumer Acceptability Advice on Health Effects Analysis on Methyl Tertiary-Butyl Ether (MtBE).

SUBCHAPTER 3. RELEASE PREVENTION, DETECTION AND CORRECTION

PART 1. RELEASE PROHIBITION, REPORTING, AND INVESTIGATION

165:29-3-1. Release prohibition

The intentional release of regulated substances from a petroleum storage tank or system is absolutely prohibited. No person shall knowingly allow a confirmed or suspected release of regulated substances from a petroleum storage tank or system to continue without investigation as required by this Chapter. Owners and operators of all petroleum storage tank systems must ensure that releases due to spills and overfills do not occur. The requirements of this ~~Subchapter~~ Chapter apply to all confirmed and suspected releases.

165:29-3-2. Release reporting

(a) These reporting requirements do not relieve the owner or operator of the responsibility to take corrective action as required by this Subchapter to protect human health and the environment, including the containment and cleanup of spills and overfills that are not required to be reported.
(b) All petroleum storage tank system owners, operators, their agents and employees must report any of the following events to ~~the~~ PSTD by telephone at 405-521-4683 or 1-888-621-5878 (and if after hours or on weekends or holidays, they must leave a message on the answering machine) within 24 hours of discovering the substances, conditions or monitoring results. Release reports may also be made by telephone to PSTD personnel at the following numbers: 405-522-1437 or 405-522-5266. Owners or operators must send written confirmation within 20 days in accordance with the release investigation and confirmation requirements of this Subchapter.
(1) The discovery of released regulated substances at the petroleum storage tank system facility or in the surrounding area including but not limited to the presence of free product or vapors in soils, basements, crawlspaces, sewer and utility lines, and nearby surface water whether on-site or off-site.
(2) Any unusual operating conditions observed by the owner or operator, like the unexplained erratic behavior of product dispensing equipment, the sudden loss of product from the petroleum storage tank system, or an unexplained presence of water in the tank, unless system equipment is found to be defective but not leaking, and is immediately repaired or replaced.
(3) An unusual level of vapor on the site that is of unknown origin. A vapor monitor well reading in excess of 4,000 units/ppm, or 1,500 units/ppm for diesel storage tanks, must be reported to ~~the~~ PSTD within 24 hours of receiving the report by the owner or operator or any of his or her employees at the facility. If diesel and gasoline tanks share the same tankpit, the reporting level is 1,500 units/ppm. Within 10 days, the owner or operator must submit to ~~the~~ PSTD all vapor monitoring well data, including background data, for the last 12 months. Upon examination of the submitted data, ~~the~~ PSTD will advise the owner or operator what action, if any, he or she needs to take. Whenever these vapor thresholds are exceeded the tank owner must provide alternative test results that confirm the petroleum storage tank system is currently not leaking.
(c) Monitoring results must be reported within 24 hours of the owner or operator's receipt of them; and ~~the~~ PSTD will advise what action should be taken to determine whether or not a release has occurred, unless the monitoring device is found to be defective and is immediately repaired, recalibrated, or replaced, and additional monitoring does not confirm the initial result.
(d) All owners and/or operators of petroleum storage tank systems shall maintain records of all reportable and nonreportable events listed in 165:29-3-2 of Commission rules sufficient to permit adequate inspection and review by ~~the~~ PSTD. These records shall be kept in permanent form for 3 years following the date of the event. If any of the possible, probable, or definite release conditions in this Section are not reported within 24 hours, the owner or operator must be prepared to provide documentation or evidence that would reasonably indicate an owner or operator's knowledge of release conditions or monitoring results was delayed.
(e) The owner or operator of a petroleum storage tank system must maintain records of all reportable and nonreportable events so that adequate inspection and review can be made by ~~the~~ PSTD. These records must be kept for 3 years following the date of the event.
(f) While aboveground petroleum releases of less than 25 gallons need not be reported, they must be recorded by the owner or operator and cleaned up immediately.
(g) Any releases requiring emergency corrective action must be reported immediately to ~~the~~ PSTD. After office hours, weekends or holidays, calls must be reported to ~~the~~ PSTD's

pager 405-575-5255~~ or the Oklahoma Department of Environmental Quality (DEQ) at 1-800-522-0206 (in state) or 405-271-4468 (out of state)~~.

165:29-3-3. Release investigation; confirmed release; suspected release; emergency suspected release and release reporting

(a) **Duty to inspect for release.** Owners and operators of storage tanks must routinely inspect and conduct necessary testing of their storage tanks to prevent spilling, overfilling, or leaking from a storage tank system into the native environment. The owner or operator of a petroleum storage tank system must take the following steps or use other procedures approved by ~~the~~ PSTD:

(1) **System test.** Owners or operators must conduct petroleum storage tank system tests that determine whether a leak exists in the portion of the tank that routinely contains regulated substances and the attached delivery piping. If the test results for the system, tank, or delivery piping indicate that a leak exists, the owner or operator must repair, replace, or upgrade the petroleum storage tank system and begin a site check. Further investigation is not required if the test results for the system, tank, and delivery piping do not indicate that a leak exists and if indicator chemical concentrations detected in soil or water are not the basis for suspecting a release. However, the owner or operator must conduct a site check as described in (B) below if the test results for the system, tank and delivery piping do not indicate that a leak exists, but indicator chemical concentrations detected in soil or water are above action levels cited in (b) of this Section.

(2) **Site check.** The owner or operator must measure for the presence of a release where released regulated substances are most likely to be present at the petroleum storage tank system site. In selecting sample types, locations, depths and measurement methods, owners or operators must consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of native soil, the depth of groundwater, and other factors appropriate for identifying the presence and source of the release. Sample locations should be approximately 5 feet from the outside of the petroleum storage tank system in native soil or another location approved by the PSTD. Analyses for both BTEX constituents and the appropriate TPH must be obtained in all cases. For sites where used oil may be involved, as determined through a TPH analysis, TCLP analysis for metals, semi-volatiles, and volatiles may be required. The TCLP results will be used on a case-by-case basis to establish cleanup levels or to refer the case to the DEQ for regulation. The selected method must be able to detect the most stringent cleanup levels required in this Chapter. The Total Petroleum Hydrocarbon (TPH) Laboratory Methodology 418.1 will not be accepted for this Chapter.

(A) If the test results for soil and/or groundwater taken outside the excavation zone or the petroleum storage tank system site confirm that a release has occurred, the owner or operator must begin the required corrective action in accordance with this Subchapter.

(B) If the test results for the native soil and/or groundwater or the petroleum storage tank system site do not indicate that a release has occurred, further investigation is not required.

(b) **Confirmed release.** ~~When a release is confirmed a case may be activated.~~

(1) When one or more of the following is present from a petroleum storage tank system, a confirmed release case may be ~~considered confirmed~~activated by PSTD staff.

(A) Free product is found anywhere.

(B) Contaminated groundwater is found outside the excavation zone.

(C) Contaminated "soil zone" is found outside the excavation zone.

(2) Any contamination from a regulated substance having concentrations determined by ~~the~~ PSTD to be harmful to human health or the environment.

(3) Laboratory analysis of levels of chemical constituent concentrations that may be required to confirm a case are:

(A) Benzene
- (i) Native Soils - 0.5 mg/kg
- (ii) Groundwater - 0.005 mg/l

(B) Toluene
- (i) Native Soils - 40.0 mg/kg
- (ii) Groundwater - 1.0 mg/l

(C) Ethyl Benzene
- (i) Native Soils - 15.0 mg/kg
- (ii) Groundwater - 0.7 mg/l

(D) Xylene
- (i) Native Soils - 200.0 mg/kg
- (ii) Groundwater - 10.0 mg/l

(E) TPH
- (i) Native Soils - 50.0 mg/kg
- (ii) Groundwater - 2.0 mg/l
- (iii) If BTEX concentrations are below action levels, a TPH concentration of 500 mg/kg may be required to confirm a case.

(c) **Suspected release.** When an owner, operator, or their agent has reason to believe that a release from a storage tank may have occurred, he or she must notify ~~the~~ PSTD within 24 hours and receive authorization from the Division prior to initiating any investigation for which subsequent payment from the Indemnity Fund may be sought.

(d) **Emergency suspected release.** Owners, operators, or their agent may begin investigation of suspected releases when the suspected release may cause immediate harm to the public health, safety, ~~or~~ welfare ~~of~~or the environment. The Petroleum Storage Tank Division will approve and reimburse expenses for an investigation after it has been performed and prior to the issuance of a Suspicion of Release by the Petroleum Storage Tank Division when the owner or operator has reasonably acted upon the belief that the suspected release gave rise to the need for immediate emergency action. The determination of

whether or not action was reasonable is within the discretion of ~~the~~ PSTD.

(e) **Release reporting.** Within 20 days after the reporting of a release, the owner or operator must submit a report to ~~the~~ PSTD summarizing the steps taken under this Section and any resulting information. If a release is confirmed through performance of the steps taken under this Section, then the report must be submitted on PSTD-specified forms and no other abatement measures or site checks are required.

PART 3. REMOVAL AND CLOSURE OF PETROLEUM STORAGE TANK SYSTEMS

165:29-3-65. Assessing the site at closure or change in service

(a) As directed by ~~the~~ PSTD, backfill material that is removed when an underground storage tank or associated piping is ~~pulled~~removed from the subsurface may be tested for BTEX, TPH (GRO and/or DRO, whichever is appropriate) and total lead, if appropriate.

(b) As directed by ~~the~~ PSTD excavated backfill material may be sampled at a rate of one composite sample (composed of 10 grab samples) per 50 cubic yards of material, which must be analyzed by a laboratory certified by DEQ.

(c) The consultant or tankowner may put excavated backfill back into the tankpit while waiting for sampling results, but if the backfill needs to be re-excavated and replaced with clean backfill, the re-excavation is not a reimbursable expense.

(d) After reviewing analytical results, ~~the~~ PSTD will determine if concentrations of Chemicals of Concern are at levels that pose a threat to human health, safety and/or the environment, and should be removed. This decision will be based upon analytical levels and specific site conditions such as, but not limited to, lithology of the tankpit walls and surrounding native soils, gradient and direction of groundwater flow, and potential receptor exposure to ~~chemicals~~Chemicals of ~~concern~~Concern.

(e) Contaminated backfill and tankpit water that poses a threat to human health and/or the environment as determined by ~~the~~ PSTD must be removed from the site to a proper disposal site and replaced by clean backfill, or may be remediated above grade to concentrations below action levels or ORBCA-related cleanup levels.

(f) Expenses incurred in the removal and disposal (but not re-excavation, see (c) above) of contaminated backfill and tankpit water may be reimbursable by the Fund only with written or documented verbal pre-approval (i.e., confirmed by fax or email) from ~~the~~ PSTD Technical staff. Reimbursement of eligible backfill disposal costs can only be paid when associated with an active, confirmed release case.

(g) Reimbursable backfill expenses identified in Section (f) above do not apply to new tank installations. If existing tanks are removed and replaced with new tanks, in order to ensure the efficacy of the cathodic protection, old backfill must be removed and new backfill must be placed in the tankpit. If the backfill is contaminated to the degree that it must be taken to a landfill, backfill removal and disposal costs are not reimbursable expenses.

(h) No soil, backfill material, or groundwater is to be removed from the site without prior PSTD approval and proper laboratory characterization unless otherwise directed by ~~the~~ PSTD.

PART 5. CORRECTIVE ACTION REQUIREMENTS

165:29-3-71. General applicability; exception

(a) Every owner or operator of a petroleum storage tank system must, in response to a confirmed release from a petroleum storage tank system, comply with the requirements of this Part, with the exception of those systems excluded from regulation in ~~OAC 165:25 and OAC 165:26, the Commission's Underground and Aboveground Storage Tank Rules~~Chapter 25 and Chapter 26 of Commission rules.

(b) All work ~~done~~ associated with the assessment, characterization, investigation, ~~clean-up,~~ remedial action, and closure ~~form~~from a release or suspected release of a regulated substance should be pre-approved by ~~the~~ PSTD.

(c) Upon confirmation of a release, or after a release from the petroleum storage tank system is identified, the owner or operator must perform the following initial response actions:

(1) Report the release to ~~the~~ PSTD either by telephone, electronic mail or fax. If after hours, contact the PSTD pager at (405) 575-5255.

(2) Take immediate action to prevent any further release of the regulated substance into the environment, and prove that any system still containing fuel is tight by having a system tightness test performed.

(3) Identify and mitigate any fire, explosion, and vapor hazards.

(4) Remove free product to the extent practicable as determined by ~~the~~ PSTD while continuing, as necessary, any actions required by this Subchapter.

(d) Any corrective action work performed at a release site must have prior documented verbal or written approval by a member of ~~the~~ PSTD ~~Technical~~ staff to be considered reimbursable by the Indemnity Fund. This requirement for pre-approval excludes required emergency spill mitigation measures. Additionally, field work associated with all corrective actions requires 48-hour (two working days excluding holidays and weekends) written notice to ~~the~~ PSTD of scheduled field activities. Notice must be made to the PSTD staff member assigned to the case, his/her Supervisor and the PSTD Technical Manager.

165:29-3-74. Initial abatement measures and site check

(a) Unless directed to do otherwise by ~~the~~ PSTD, the owner or operator must perform the following abatement measures:

(1) Remove as much of the regulated substance from the leaking petroleum storage tank system as is necessary to prevent further release to the environment.

(2) Visually inspect the petroleum storage tank system for any aboveground releases or exposed below-ground

releases and prevent further migration of the released substance into surrounding soils and the waters of the state.

(3) Continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the petroleum storage tank system excavation zone and entered into subsurface structures such as sewers or basements.

(4) Remedy hazards posed by impacted soils that are excavated or exposed as a result of release confirmation, site investigation, abatement, or corrective action activities. All remedies, including but not limited to treatment or disposal of soils, must comply with applicable state and local requirements where applicable.

(5) Measure for the presence of a release where the released ~~chemicals~~regulated substances are most likely to be present at the petroleum storage tank site, unless the presence and source of the release have been confirmed in accordance with the site check or the closure site assessment. In selecting sample types, sample locations and measurement methods, the owner and/or ~~or~~ operator must consider the nature of the stored substance, the type of backfill, the depth to groundwater and other factors appropriate for identifying the presence and source of the release. Unless directed to do otherwise by ~~the~~ PSTD, the owner or operator must analyze for the Chemicals of Concern (COCs) using approved analytical methods. For sites where used oil is involved, as determined through TPH analysis, TCLP analysis for metals, semi-volatiles and volatiles may be required. The selected analytical method must be able to detect concentrations of Chemicals of Concern below action levels. In addition, if a release occurs from any PSTD regulated petroleum storage tank system ~~containing a hazardous~~that is contaminated or combined with a non-regulated substance, the cleanup requirements for that particular ~~constituent~~release will be determined ~~on a site-by-site basis in conjunction with~~by DEQ ~~pursuant to Title 27A § 1-3-101 et seq~~.

(6) Investigate to determine the presence and amount of free product.

(b) Within 20 days after release confirmation, the owner or operator must submit a report to the PSTD on the specified form that summarizes the initial abatement steps taken and any resulting information or data, unless this report was required to be submitted under 165:29-3-3.

165:29-3-76. Tier 1A ORBCA

(a) Unless otherwise directed by the PSTD, the owner or operator must compile information in order to assess the site using the Risk-Based Corrective Action (RBCA) process described in the ORBCA Guidance Document. (The ORBCA Guidance Document is available at the offices of the Petroleum Storage Tank Division of the Oklahoma Corporation Commission.) The RBCA process must be implemented with a three-tiered approach that must involve an increase in the level of data collection and analysis from one tier to the next. Some conservative default parameters under the Initial Site Characterization Tier 1A process must be replaced with more site-specific parameters under the Tier 2 and Tier 3 process. PSTD will review the results and recommendations at the completion of the Tier 1A analysis and decide if a more site-specific tiered analysis is required by initiating a Tier 2 or Tier 3 process, or whether remedial action should be performed as provided for in this Subchapter.

(b) ~~The~~ PSTD will only accept and review reports, worksheets, checklists, closure reports or other relevant documents which incorporate the RBCA process, or any other acceptable risk analysis, from a Commission Licensed ~~Remediation~~Environmental Consultant.

(c) The RBCA Tier 1A process is as follows:

(1) Tier 1A: Non-site-specific risk-based screening method used to determine corrective action goals using limited site-specific data.

(A) Tier 1A establishes conservative cleanup goals called modified Risk-Based Screening Levels (RBSLs). Only the Fate and Transport Parameters cited in the ORBCA Guidance Document may be replaced by site-specific information obtained through site investigation and assessment. Justification must be provided when changes in any of the default Fate and Transport Parameters are indicated. The default Exposure Factors cannot be modified, nor can degradation rates be used under a Tier 1A evaluation. This evaluation must be performed using the models cited in Appendix C of the ORBCA Guidance Document. The modified RBSLs take into consideration regional characteristics, aesthetic criteria, and other appropriate standards such as Maximum Contaminant Levels (MCLs) for water. Tier 1A modified RBSLs are derived from standard exposure scenarios using current Reasonable Maximum Exposure (RME) toxicological parameters and conservative contaminant migration models. RBSL values are determined by the PSTD using 1 in 1,000,000 as a Target Risk Limit for carcinogens and a Hazard Quotient (HQ) not greater than 1.0 as a Target Risk Limit for non-carcinogens. 1 in 10,000 is the acceptable Target Risk Limit for carcinogens for future potential receptors.

(B) The most likely Point of Exposure (POE) for current and potential future beneficial use of fresh groundwater should be determined. The concentration at this Point of Exposure for each Chemical of Concern (COC) must not exceed the Target Risk Limits cited in this Section.

(C) Unless otherwise directed by ~~the~~ PSTD under Tier 1A the owner or operator must drill and install a minimum of four (4) two-inch (2") diameter monitoring wells outside of the UST pit or AST containment or product piping trench excavation zones. These wells must be located as follows:

(i) One well must be installed in an apparent upgradient location to any known potential source at the site on or as close to the release as possible.

(ii) One well must be installed in a location most likely to be contaminated.

(iii) One well must be installed in a location that will allow the determination of an accurate groundwater gradient.

(iv) One well must be installed in the direction of the nearest probable Point of Exposure either at the nearest property line or fifty (50) feet from the source of contamination, whichever is closer, or at another location as determined by ~~the~~ PSTD. This well will be the Point of Compliance (POC) well for the Tier 1A evaluation unless there is a Point of Exposure nearer to the source of contamination, in which case the Point of Exposure will also become the Point of Compliance. The concentration for each Chemical of Concern in the Point of Compliance well should not exceed the Tier 1A standards as calculated using the ORBCA Guidance Document. If a drinking water supply well has been identified within 330 feet of the site, groundwater MtBE must be tested at the Point of Compliance. 0.020 mg/L will be considered the level of concern for MtBE and may require further assessment and corrective action.

(2) Tier 1A: Risk-Based Screening Level corrective action goals developed using limited site-specific data.

(A) This evaluation must be performed using the same models as those which are cited in Appendix C of the Guidance Document.

(B) Only the Fate and Transport Parameters cited in the ORBCA Guidance Document may be replaced by site-specific information obtained through site investigation and assessment. Justification must be provided when changes in any of the Tier 1A default Fate and Transport Parameters are indicated. The Tier 1A default Exposure Factors cannot be modified, nor can degradation rates be used under a Tier 1A evaluation.

(3) Within 45 days of release confirmation, or according to a schedule established by ~~the~~ PSTD, the owner or operator must submit the information required in the Tier 1A evaluation as a report. This report must be submitted in a style and format as set forth in the ORBCA Guidance Document.

(d) ~~The~~ PSTD may re-evaluate a Tier 1A analysis of a site, for the purpose of closure, on a case-by-case basis.

165:29-3-80. Remedial Action Plan

(a) At any point after reviewing the information submitted, PSTD may require additional information or a Remedial Action Plan for contaminated soils and groundwater. If a plan is required, it must be submitted on forms or in the format specified by ~~the~~ PSTD.

(b) PSTD will approve a Remedial Action Plan only after the Licensed ~~Remediation~~ Environmental Consultant ensures that implementation of the plan will adequately protect human health, safety, and the environment as determined by using the process outlined in the ORBCA Guidance Document.

(c) As directed by PSTD, the owner or operator must implement the Remedial Action Plan, including any modifications to the plan made by PSTD. Implementation for the purposes of this Chapter means that the Remedial Action Plan approved by PSTD is fully operational and is performing the task for which it was designed.

(d) The owner or operator will be required to perform remediation and compliance monitoring as directed by PSTD.

(e) The owner or operator may, with verbal pre-approval documented by fax or email of ~~the~~ PSTD ~~Technical~~ staff, begin cleanup of soil and groundwater before the Remedial Action Plan is approved, provided that the owner or operator:

(1) Notify PSTD of the intention to begin cleanup at least seven days prior to initiating any cleanup action, unless it is an emergency.

(2) Comply with any conditions imposed by PSTD, including halting cleanup or mitigating adverse consequences from cleanup activities.

(3) Incorporate these self-initiated cleanup measures in the Remedial Action Plan or closure by risk assessment that is submitted to ~~the~~ PSTD for approval.

PART 7. LICENSING FOR ~~REMEDIATION~~ENVIRONMENTAL CONSULTANTS

165:29-3-90. Licensing for ~~Remediation~~Environmental Consultants involved with closures, investigation and the remediation of releases from underground or aboveground storage tanks

(a) Any individual seeking a license as ~~a Remediation~~an Environmental Consultant involved with closures, investigation and/or the remediation of releases from either underground or aboveground storage tank sites must complete an application form prepared by PSTD. The application form requires information regarding education, experience, knowledge of applicable state and federal regulations, industry standards and practices and references.

(b) All applicants must qualify in the following manner:

(1) Satisfy requirements of the Occupational Safety and Health Administration (OSHA) 29 CFR 1910.120 (HAZWOPER) 40 hour course with eight- (8-) hour annual updates and the eight- (8-) hour supervisor course; must provide evidence of the successful completion of a PSTD-approved Risk-Based Corrective Action course, seminar or school. At a minimum this course must include sixteen (16) hours of risk assessment/risk analysis and fate and transport of chemicals in the environment and eight (8) hours of hands-on computer training with appropriate software; and

(2) Have seven (7) years' environmental experience with at least two (2) years' experience at regulated petroleum storage tank facilities and pass an examination, which must be taken no more frequently than once every six (6) months, authorized by the State of Oklahoma, which demonstrates knowledge of reference materials

published by EPA:NWWA (Technical Enforcement Guidance Document-TEGD) and all applicable federal, state, and local regulations; or

(3) Have a four- (4-) year degree from an accredited college or university recognized by the state in Geology, Hydrology, Environmental Science, Environmental Engineering, Petroleum Engineering, Civil Engineering, Geologic Engineering or an equivalent engineering degree and at least four (4) or more years of environmental experience with at least two (2) years' experience at regulated petroleum storage tank facilities, and pass an examination approved by the PSTD. The examination will test an applicant's knowledge of industry standards, reference materials, laws and regulations, and may be taken no more frequently than once every six (6) months.

(c) Licensed ~~Remediation~~Environmental Consultants are required to pay fees for applications, examinations, and certifications prior to examination and license issuance.

(d) Licensed ~~Remediation~~Environmental Consultants must provide proof of sixteen (16) hours of PSTD-approved continuing professional education to PSTD every two (2) years.

(e) Sampling, sampling at tank closures, investigations, and remediation or any other activities directed by PSTD must be under the supervision of a ~~licensedRemediation~~Licensed Environmental Consultant. All work requiring supervision by Licensed ~~Remediation~~Environmental Consultants must contain a verification statement signed by the consultant in supervisory control.

(f) Licensed ~~Remediation~~Environmental Consultants must supervise and/or perform work only in the areas in which they are educated and/or experienced.

(g) PSTD has the responsibility and for good cause shown, to deny, suspend, refuse to renew or revoke the license, or reprimand any ~~Remediation~~Licensed Environmental Consultant.

(h) Prior to any license suspension, revocation, or refusal to renew, the Director will have the matter investigated and a report prepared for his or her consideration. If the Director elects to pursue suspension, revocation, or refusal to renew, the Licensee will be officially notified by the Director by Notice sent to the Licensee by certified mail/return receipt requested. The Notice will state the date and time of the hearing scheduled before a Commission Administrative Law Judge. The burden of proof of violations of this Chapter, as well as adherence to applicable State law, rests upon ~~the~~ PSTD.

(i) This Section in no way exempts the ~~Remediation~~Licensed Environmental Consultant from having to meet other applicable requirements as set by state and federal statutes and regulations from other state and federal agencies.

(j) Any licensee in violation of state law, enabling statute, PSTD rules and/or Commission orders may be subject to fines assessed by the Commission after notice and hearing.

SUBCHAPTER 5. ADMINISTRATIVE PROVISIONS

165:29-5-1. Hearings, orders and appeals

(a) Hearings and appeals to enforce the provisions of this Chapter will be conducted in accordance with ~~OAC 165:5, the Commission's Rules of Practice~~Chapter 5 of Commission rules.

(b) The Commission will issue orders it deems necessary to enforce the provisions of this Chapter to protect the public health, safety or welfare or the environment within the State of Oklahoma.

165:29-5-3. Notices [REVOKED]

~~Any notices and reports required to be submitted to the Commission must be given or sent to: the Oklahoma Corporation Commission, Room 238, Attn: Petroleum Storage Tank Division, P. O. Box 52000, Oklahoma City, Oklahoma 73152-2000, (405) 521-4683.~~

[OAR Docket #15-443; filed 6-11-15]

TITLE 165. CORPORATION COMMISSION CHAPTER 30. MOTOR CARRIERS

[OAR Docket #15-444]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 3. Intrastate Motor Carriers
Part 1. Applying for a License
165:30-3-3. License and certificate renewals [AMENDED]
Part 11. Miscellaneous
165:30-3-92. Pollution abatement [AMENDED]
Subchapter 7. Procedural Rules
165:30-7-5. Forms [AMENDED]
Subchapter 18. Overweight Variance Permits [NEW]
165:30-18-1. Overweight Variance Permits [NEW]
Subchapter 19. Registration Pursuant to the International Registration Plan
165:30-19-8. Maintenance and availability of operational records [AMENDED]
165:30-19-13. Amended mileage/adding states [AMENDED]
165:30-19-15. Mileage [AMENDED]
165:30-19-20. Incorporation by reference [AMENDED]

AUTHORITY:
The Commission's statutory authority is found in Title 47 O.S. § 1120, Title 47 O.S. § 230.24, Title 47 O.S. § 230.32, Title 47 O.S. §14-109, Article IX, Sections 18 and 18a of the Oklahoma Consititution and OAC 165:5-1-7.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
n/a

COMMENT PERIOD:
December 16, 2014 to February 11, 2015

PUBLIC HEARING:
February 12, 2015

ADOPTION:
February 12, 2015

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 19, 2015

APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 8, 2015

FINAL ADOPTION:
June 8, 2015

EFFECTIVE:
August 27, 2015

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
Incorporated standards:
International Registration Plan (IRP), Articles I through ~~XXIII~~XV and all appendices
Incorporating rules:
165:30-19-20
Availability:
8:00 am to 4:30 pm
Transportation Division
Oklahoma Corporation Commission
2nd Floor, Jim Thorpe Building
2101 N. Lincoln Boulevard, Oklahoma City
ANALYSIS:
The rules were adopted in an effort to update, clarify and streamline language and procedures appearing in OAC 165:30, as well as to address changes in authority, especially with respect to overweight variance permits and truck yard wash pits. Rules were also amended to reflect the newly adopted Full Reciprocity Plan per Oklahoma's membership in the International Registration Plan (IRP).

OAC 165:30-3-3 was adopted to eliminate multi-year renewals, which has caused confusion leading to motor and private carriers to fail to comply with the annual identification device renewal. OAC 165:30-3-92 is amended to reference the new permitting requirement following the transfer of authority of truck yard wash pits from the Commission's Transportation Division to the Commission's Oil and Gas Division; similarly, OAC 165:30-3-92(d)-(k) are deleted to reflect the transfer of authority of truck yard wash pits from the Transportation Division's rules to the Oil and Gas Division's rules. OAC 165:30-7-5 is amended to remove the Truck Yard Pit forms, due to the above mentioned transfer of authority to the Oil and Gas Division. Furthermore, amending OAC 165:30-7-5 is required to add the International Registration Plan Temporary Permit form, and to add an application form for Overweight Variance Permits subsequent to the new authority under 47 O.S. §14-109. The new permanent rule OAC 165:30-18-1 is also needed following the new authority to regulate overweight variance permits under Title 47 O.S §14-109. This new rule will provide the requirements to all applicants seeking the overweight variance permit.

OAC 165:30-19-8 is amended to tie assessments based on failure to maintain, or present for inspection, operational records to the International Registration Plan Section 1015, as well as authorizing denial of apportionment privilege to conform to the newly adopted Full Reciprocity Plan. OAC 165:30-19-13 is amended to make the subsections 165:30-19-13(a)-(e) applicable to periods before January 1, 2015, and requires all jurisdictions be displayed on all cab cards subsequent to that date, as required under the newly-adopted Full Reciprocity Plan. OAC 165:30-19-15 is amended to make subsections 165:30-19-15(a)-(f) applicable to periods before January 1, 2015, and creates subsection 165:30-19-15(g) to provide for mileage reporting subsequent to that date, as required under the newly-adopted Full Reciprocity Plan. OAC 165:30-19-20 is amended to update the incorporation by reference section to reference the new International Registration Plan Articles, as required by the newly adopted Full Reciprocity Plan, and to provide a reference to the location of the International Registration Plan on the internet for easy access by motor carriers.
CONTACT PERSON:
Mark Willingham, Assistant General Counsel, Office of General Counsel, Oklahoma Corporation Commission, 2101 N. Lincoln Blvd., P.O. Box 52000, Oklahoma City, OK 73152-2000, (405)522-1638, m.willingham@occemail.com.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 3. INTRASTATE MOTOR CARRIERS

PART 1. APPLYING FOR A LICENSE

165:30-3-3. License and certificate renewals

(a) Any motor carrier desiring to continue intrastate motor carrier operations as granted in its license or certificate, shall, prior to the date of license or certificate expiration, apply for renewal by submitting the appropriate application form (TDF 2) and all supporting documentation. Each renewal application shall be properly signed, attested to as follows:

(1) Application of sole proprietorship must be signed by owner.

(2) Application of partnership must be signed by one of the partners.

(3) Application of corporation must be signed by an officer.

(b) All intrastate motor carrier licenses and certificates issued by the Commission shall expire the same calendar month as issued, and shall be valid for a period of one year~~, but may be renewed for up to three years~~. ~~Carriers renewing licenses or certificates for more than one year must maintain all requirements of that license or certificate in order for the license or certificate to be valid.~~

(c) Renewal applications shall be accompanied by a filing fee as prescribed by the Commission, unless filed simultaneously with a sub application to modify operations.

(d) A renewal application may be set for hearing at the discretion of the Commission for good cause.

(e) An intrastate motor carrier desiring to renew its license or certificate should apply for renewal of its license or certificate a minimum of thirty (30) days prior to its expiration.

(f) A renewal application will not be accepted if the license or certificate has previously expired, unless the Director of the Transportation Division reviews and approves the acceptance of the application for renewal.

(g) No intrastate motor carrier license or certificate shall be renewed until all outstanding fines or judgments due the Commission or other state(s) regulatory agencies have been satisfied.

(h) No intrastate motor carrier operations shall be performed under an expired motor carrier license or certificate.

PART 11. MISCELLANEOUS

165:30-3-92. Pollution abatememt

(a) All transportation by motor vehicle of deleterious substances including salt water, brines, liquid mud, acids, or any other fluids used in the drilling, completion, operation or reworking of an oil or gas well and/or any fluids generated as a by-product or resulting from the production of an oil or gas well or the operation of a disposal facility or facility where equipment is cleaned shall be conducted in such a manner that prevents any pollution to the surface of the earth or any fresh water bearing formation. Pollution of surface water or subsurface water is hereby prohibited.

(1) This Section shall not be construed as modifying the rights, obligation or duties of any person under the law of this State, or any order, rule or regulation of the Oklahoma Water Resources Board, State Department of Health, Department of Environmental Quality, Oklahoma

Wildlife Conservation Commission, State Board of Agriculture, Department of Pollution Control, Department of Public Safety or any other agency of this State with respect to the pollution of fresh water.

(2) When a complaint is received against any person or company alleging pollution as prohibited in this Section, or field investigations by Commission staff or other regulatory agencies indicates prohibited pollution occurring, the Transportation Division shall immediately initiate such action as is necessary or appropriate to abate the pollution.

(b) No transporters of fluids mentioned in this Section shall use an earthen pit for any storage of said fluids or the washing or otherwise cleaning of the inside of the trailer or container used to transport or store such fluids.

(c) Any truck yard pit used for the temporary storage of fluids from washing or cleaning activities of equipment used in the transportation of fluids mentioned in this Section shall not be ~~constructed or enlarged~~utilized until ~~application (TDF-15) has been made to the Transportation Division, and approval received~~the 1014T permit is issued by the Commission's Oil and Gas Division as set forth in OAC 165:10.

~~(d) An application to construct or enlarge a truck yard pit shall be accompanied by the filing fee as prescribed by Commission rule, contain an original signature and reflect the following information:~~

~~(1) Applicant's name and trade name (if any).~~

~~(2) Mailing and physical address of applicant.~~

~~(3) USDOT number of applicant.~~

~~(4) Telephone and facsimile numbers of the applicant.~~

~~(5) Contact person.~~

~~(6) Email address of the applicant, if any.~~

~~(7) Legal location of the truck yard pit.~~

~~(8) Size of the truck yard pit.~~

~~(9) Soil conditions in the pit area.~~

~~(10) Depth of subsurface fresh water.~~

~~(11) Distance to the nearest surface fresh water.~~

~~(12) Additional information as required.~~

~~(e) If the applicant is not the landowner, the application must additionally be accompanied by the following:~~

~~(1) The name of the landowner.~~

~~(2) The mailing and physical addresses of the landowner.~~

~~(3) Telephone and facsimile numbers of the landowner.~~

~~(4) Email address of the landowner, if any.~~

~~(5) A copy of the lease agreement.~~

~~(6) Written permission of the landowner for the application to construct or enlarge a truck yard pit.~~

~~(f) Fluids generated from washing/cleaning operation in a truck yard shall be collected into a plastic lined pit of at least sixty (60) mls, concrete pit whose mechanical integrity is intact, or a metal container with such generated fluids to be taken to a licensed disposal facility. No pit shall be constructed or maintained as to collect outside runoff water, and the fluid level in such pit must be maintained at all times at least thirty six (36) vertical inches below the lowest point on the embankment.~~

~~(g) At any time the owner or operator of the truck yard pit changes or the owner or operator changes its name, the Transportation Division must be notified immediately in writing by the authorized pit owner or operator.~~

~~(h) No truck yard pit shall be abandoned without prior notification to the Transportation Division using the form TDF 15. Any such pit abandoned will be emptied and leveled within thirty (30) days of abandonment. The pit operator shall ensure the pit location is inspected by the Transportation Division prior to the pit being emptied and leveled.~~

~~(i) A truck yard pit shall be emptied and cleaned for the purposes of inspection, at the discretion of the Transportation Division Director.~~

~~(j) The Commission, by order, may close any truck yard pit to be found in violation of this Section.~~

~~(k) A truck yard pit permit may be transferred to another person upon approval by the Transportation Division. Application for transfer should be submitted on TDF 15T, and shall tender with the application a fee as prescribed by law or by the Commission rule.~~

SUBCHAPTER 7. PROCEDURAL RULES

165:30-7-5. Forms

The following forms of the Commission relate to this Chapter:

(1) **Intrastate license forms.**

(A) TDF 1 - Application for Intrastate Motor Carrier For-Hire or Private Carrier License

(B) TDF 2 - Application for ~~renewal~~Renewal of Intrastate Motor Carrier License or Certificate

(C) TDF 3 - Application for Change of Name on Intrastate Carrier License or Certificate

(2) **Intrastate certificate forms.**

(A) MCF 1 - Application For Household Goods Certificate

(B) Form H - Uniform Motor Carrier Cargo Certificate of Insurance

(C) Form J - Uniform Motor Carrier Cargo Surety Bond

(3) **Interstate Form** - Unified Carrier Registration

(4) **Hazardous Waste forms.**

(A) UPW - Part I - Registration

(B) UPW - Part II - Permit

(C) UPW - Part III - Other Information

(D) UPW - Part IV - Certification

(E) UPW - Uniform Program Fee Worksheet (Schedules A-D and Summary)

(5) **IFTA/IRP forms.**

(A) IRP Schedule A - International Registration Plan Original Application-Schedule A

(B) IRP Schedule B ~~0~~- International Registration Plan- Schedule B

(C) IRP Schedule C ~~0~~- International Registration Plan Supplemental Application-Schedule C

(D) IRP Schedule G ~~0~~- International Registration Plan Declaration of Estimated Miles-Schedule G

(E) IRP Misc 1 - International Registration Plan Affidavit for Lost/Stolen Tag and Additional Cab Cards

~~(F) IRP TAP - International Registration Plan Application for Temporary Permit~~

(~~G~~F) IFTA Application - International Fuel Tax Agreement Registration Application

(~~H~~G) IFTA QTR - International Fuel Tax Agreement Quarterly Report

(6) **Miscellaneous forms.**

(A) TDF 8 - Application for Reinstatement

(B) TDF 14 - Application For a Deleterious Substance Transport Permit

(C) TDF 16 - Application for Identification Devices

(D) TDF 17 - Application for Address Change

(E) TDF 18 - Affidavit of No Operations

(F) TDF 19 - Carrier Identification Report

(G) Form E - Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance

(H) Form K - Uniform Notice of Cancellation of Motor Carrier Insurance Policies

(I) Form G - Uniform Motor Carrier Bodily Injury and Property Damage Liability Surety Bond

(J) Form L - Uniform Notice of Cancellation of Motor Carrier Surety Bonds

~~(K) TDF 15 - Application to Construct or Enlarge a Truck Yard Pit~~

~~(L) TDF 15T - Application to Transfer a Truck Yard Pit Permit~~

(~~M~~K) TDF 25 - Application for Motor Carrier Rules and Regulations

(~~N~~L) TDF 26 - Motor Carrier Rules and Regulations Update Notification

(~~O~~M) TDF 28 - Vehicle Information Request Form

(N) TDF 29 - Application for Overweight Variance Permit

SUBCHAPTER 18. OVERWEIGHT VARIANCE PERMITS

165:30-18-1. Overweight Variance Permits

(a) Applicants for an annual special overload permit, otherwise known as an Overweight Variance Permit, must hold a current vehicle registration.

(b) Commodities that may be transported under a gross weight or an axle weight Overweight Variance Permit are listed in 47 O.S. § 14-109.

(c) Requirements for an Overweight Variance Permit include:

(1) Submission of Transportation Division Form (TDF) 29, Application for Overweight Variance Permit;

(2) Valid payment of all fees as prescribed by law;

(3) Current commercial vehicle registration (a clear unaltered copy of the current registration may be required to be submitted);

(4) Valid intrastate authority, if applicable; and,

(5) Compliance with interstate requirements, if applicable.

(d) The applicant is also required to ensure the vehicle is registered at the maximum allowable rate, as specified in 47 O.S. §14-109, prior to submitting an application.

(e) Overweight Variance Permits are issued for twelve (12) months from the date of issue.

(f) The axle or gross variance allowed by an Overweight Variance Permit can only be utilized on Oklahoma roadways that are not a part of the National System of Interstate and Defense Highways.

(g) The axle variance allowed by the Overweight Variance Permit does not allow individual axles to exceed the manufacturer's component rating.

(h) Once issued, an Overweight Variance Permit is not valid if the vehicle is not currently registered.

(i) A copy of the Overweight Variance Permit must be carried in the vehicle.

(j) A renewal notice will be emailed to the Overweight Variance Permit holder. Failure to receive such notice does not relieve the Permit holder from its responsibility to timely renew the permit.

SUBCHAPTER 19. REGISTRATION PURSUANT TO THE INTERNATIONAL REGISTRATION PLAN

165:30-19-8. Maintenance and availability of operational records

(a) ~~**Retention of records.**~~ Operational records must be maintained for a period of three (3) years after the close of the registration year for which the records were included in the application. Failure to maintain the required records may result in an assessment ~~of up to 100 percent Oklahoma registration fees~~in accordance with Section 1015 of the IRP~~, additional fees due other states, and/or denial of apportion privilege~~.

(b) ~~**Availability of records.**~~ Failure to make records available upon proper request ~~may~~shall result in ~~mileage adjustment evidence by~~ an assessment ~~of up to One Hundred percent (100%) Oklahoma registration fees~~in accordance with Section 1015 of the IRP~~, additional fees due other states, and/or denial of apportion privilege~~.

(c) Failure to maintain or make records available may also subject the registrant to denial of apportion privilege.

(~~c~~d) ~~**Electronic records.**~~ Registrants or licensees selected for audit whose fleet size exceeds 200 vehicles are required to submit the detailed records required to conduct the audit in the electronic format established by the Commission.

165:30-19-13. Amended mileage/adding states

(a) Subsections (a) - (e) of this Section are applicable for registration periods commencing before January 1,

2015.~~If~~When the operations of a registrant change to include additional states during the registration year, the additional states can be added to the fleet. The states must be added to all vehicles in the fleet. The original mileage percentages cannot be changed. The addition of a state or states will result in a total fee assessment in excess of One Hundred percent (100%).

(b) To apply to add states, the registrant must complete Schedule B and submit Schedule A or a list of currently registered vehicles. The appropriate space on the form should be marked to show the type of transaction and mileage must be shown for each state added. If there is actual mileage for a state being added, actual miles must be included. If not, estimated must be used.

(c) Estimated mileage must be based on reasonable proposed operations of the fleet during the entire calendar year for which a state is being added. The applicant shall be required to substantiate the estimation by submitting a full statement of the proposed method of operation on a form provided by the Commission. The statement shall include reasonable information relating to origin, destination, and number of trips. If requested, subsequent to initial review and prior to disapproval, the applicant shall submit supporting documentation, which may include verifiable contracts or brokerage agreements, or both. Alternatively, owner-operators may provide a copy of the miles reported by the carrier with which the vehicle and driver have a valid lease agreement. Additionally, the Division may independently substantiate mileage through other sources available to the Commission.

(d) In the absence of a full statement of the proposed method of operation, the Commission shall require the applicant to utilize the estimated mileage chart established by the Commission.

(e) Once the fees are paid, new IRP cab cards will be issued reflecting the additional state(s).

(f) For registration periods commencing on or after January 1, 2015, all jurisdictions will be displayed on all cab cards.

165:30-19-15. Mileage

(a) Subsections (a) - (f) of this Section are applicable for registration periods commencing before January 1, 2015.~~If~~When an applicant for proportional registration operated for ninety (90) or more days during the mileage reporting period of the preceding year, actual operated miles must be filed. For those jurisdictions where there is no mileage to report, but for which proration is desired, estimated miles must be filed.

(b) If an applicant for proportional registration is new, or the applicant did not operate for ninety (90) days or more during the reporting period, estimated miles must be filed for all jurisdictions for which proration is sought.

(c) Estimated mileage will not be accepted after the first year of prorate registration in Oklahoma. Provided, in cases where actual operation was less than ninety (90) days during the mileage reporting year, estimated mileage will also be accepted for the second year.

(d) Estimated mileage must be based on reasonable proposed operations of the fleet during the entire calendar year for which proportional registration is being sought. The applicant shall be required to substantiate the estimation by submitting a full statement of the proposed method of operation on a form provided by the Commission. The statement shall include reasonable information relating to origin, destination, and number of trips. If requested, subsequent to initial review and prior disapproval, the applicant shall submit supporting documentation, which may include verifiable contracts and/or brokerage agreements. Alternatively, owner-operators may provide a copy of the miles reported by the carrier with which the vehicle and driver have a valid lease agreement. Additionally, the Division may independently substantiate mileage through other sources available to the Commission.

(e) In the absence of a full statement of the proposed method of operation, the Commission shall require the applicant to utilize the estimated mileage chart provided by the Commission. The chart shall be developed and updated annually by dividing the total actual miles for each member jurisdiction reported by Oklahoma registrants by the total number of vehicles registered with actual miles for the jurisdiction.

(f) Failure to provide a full statement of the proposed method of operation, or in the alternative, to submit the application based upon the estimated mileage chart developed by the Commission shall result in denial of the application for proportional registration.

(g) For registration periods commencing on or after January 1, 2015, any actual distance operated during the reporting period must be filed with the renewal application. If no actual distance was incurred in any jurisdiction during the reporting period, then the average-per-vehicle distance per member jurisdiction chart must be used to renew the fleet registration.

165:30-19-20. Incorporation by reference

(a) **Reference to the International Registration Plan ("IRP").** When reference is made to the International Registration Plan or "IRP", it shall mean, unless the context clearly indicates otherwise, the registration reciprocity agreement among the various states of the United States and the provinces of Canada, including the Audit Procedures Manual, which provides for payment of license fees for apportionable vehicles on the basis of fleet miles operated in the various jurisdictions, to which Oklahoma is a signatory state, as published by International Registration Plan, Inc., as currently amended.

(b) **Incorporation.** The following Articles are, unless otherwise specifically provided, incorporated by reference in their entirety:

(1) Articles I through ~~XXIII~~XV and all appendices of the International Registration Plan ("IRP"); and,

(2) The International Registration Plan Audit Procedures Manual.

(c) **Inclusion of IRP citations and definitions.** When a provision of the IRP is incorporated by reference, all citations and definitions contained therein are also incorporated by reference.

(d) **Inconsistencies or duplication.** In the case of any inconsistency or duplication between the requirements of those provisions incorporated by reference in this Section, and the rules set out in this Subchapter, the provisions incorporated by reference shall prevail, except where rules set out in this Subchapter are more particular. The provisions incorporated by

reference are subject to any limitations provided by Oklahoma law.

(e) IRP can be found online at http://www.irponline.org

[OAR Docket #15-444; filed 6-11-15]

TITLE 165. CORPORATION COMMISSION CHAPTER 55. TELECOMMUNICATIONS SERVICES

[OAR Docket #15-449]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Chapter 55. Telecommunications Services [AMENDED]
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The Commisssion's authority is found in Article IX, § 18 Okla. Const., 17 Okla. Stat. §§ 131 et seq.
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Amendments and deletions to existing Commission rules in Chapter 55 were needed to comply with the Oklahoma Administrative Procedures Act by removing direct quotes of statutes, clean-up the rules by consistently using both a word and number in parenthesis when identifying a quantity, remove a publication requirement associated with a Certificate of Convenience and Necessity that would require publication for a hearing when the statute only requires publication of the request, remove language that is obsolete because rules have changed or dates have passed, and put all rules regarding the provision of federal Lifeline service in one location and make them applicable regardless of the type of telecommunications provider supplying the Lifeline service, and remove language that was made obsolete by changes to federal law, *Lifeline Reform Order*, 27 FCC Rcd 6656, 6766-67, ¶¶ 250, 253.
CONTACT PERSON:
Kimberly Prigmore, Deputy General Counsel, Office of General Counsel, Oklahoma Corporation Commission, 2101 North Lincoln Boulevard, P.O. Box 52000, Oklahoma City, Oklahoma 73152-2000, Telephone: (405) 522-1010.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 1. GENERAL PROVISIONS

165:55-1-2. Jurisdiction

The Oklahoma Corporation Commission, by virtue of Article IX § 18 *et seq.* of the Constitution of the State of Oklahoma,~~and~~ enactments of the Oklahoma Legislature, and federal law has the authority and responsibility to supervise, regulate, and control ~~a~~the Oklahoma businesses of telecommunications service ~~provider's business~~providers and interexchange telecommunications carriers in Oklahoma which ~~is~~are subject to regulation of the Commission. In addition, the Commission has the authority to designate eligible telecommunications carriers and to enact rules and regulations in connection therewith. No person or corporation not otherwise a telecommunications service provider within the meaning of this Chapter shall be deemed such solely because of the manufacture, distribution, installation, or maintenance of end-user premises communication equipment and accessories.

165:55-1-4. Definitions

The following words and terms, when used in this Chapter, shall have the following meanings, unless the context clearly indicates otherwise. These definitions shall be supplemented by the definitions contained in 17 O.S. §139.102. To the extent there is a conflict between a definition contained in 17 O.S. §139.102 and a definition in this Section, the definition in this Section shall be applicable to this Chapter:

~~**"Access line"** means the facility provided and maintained by a telecommunications service provider which permits access to and/or from the public switched network.~~

"Access service" means any tariffed wholesale service provided by one LEC to another LEC, CLEC, interexchange carrier certificated by the Commission or an end-user that allows for access to the local exchange telecommunications network, excluding local interconnection arrangements.

"Applicant for telecommunications service" means any person, partnership, cooperative corporation, corporation, or lawful entity requesting service(s) from a telecommunications service provider.

"Authorized carrier" means any telecommunications carrier that submits a change, on behalf of an end-user, in the end-user's selection of a provider of telecommunications service with the end-user's authorization verified in accordance with the procedures specified in this Chapter.

"Base rate area" means the developed area within each exchange service area designated in the tariffs of the telephone company or if not so designated, an area within one-half (1/2) mile radius of the serving central office.

"Basic local service" means all residential and business telecommunications voice and/or relay service which meets the standards set forth in 165:55-13-10, including lines beyond the first line into a residence or business.

"Billing agent" means an entity which provides bills to an end-user for services received from a telecommunications service provider.

"Billing and collection service" means the wholesale service provided by a TSP or IXC for the processing and delivery of customer bills, on behalf of a third party.

"Bona Fide Request" means a written request delivered to a telecommunications service provider requesting services and interconnection provided for in this Chapter.

"CIC" means carrier identification code which identifies a provider of toll services by a three- or four-digit number.

"Campus" means multiple buildings located on a single tract or area of land or on adjacent and abutting tracts of land where all the buildings and land are subject to majority ownership by the same person. A campus may be intersected or traversed by public thoroughfares provided that the segments created would be continuous in the absence of the thoroughfare. A tract or tracts of land used for farming and/or ranching shall not be considered a "campus."

"Carrier of last resort" means a telecommunications service provider as designated by the Commission pursuant to OAC 165:55-17-29.

"Central office" means an operating unit of a telecommunications service provider by which connections are established between end-users' lines and between end-users' lines and trunks or toll lines.

"Circuit" or "Channel" means one communication path between two (2) or more points suitable for transmitting information.

"Class of service" or "Customer class" means a description of service furnished to an end-user in terms of type of rate, location, and use.

"CLEC" means a Competitive Local Exchange Carrier.

"Clear and conspicuous" means notice that would be apparent to the reasonable consumer.

~~**"Commission"** means the Oklahoma Corporation Commission.~~

~~**"Competitive Local Exchange Carrier" ("competitive LEC")** means, with respect to an area or exchange(s), a telecommunications service provider that is certificated by the Commission to provide local exchange services in such area or exchange(s) within the State of Oklahoma after July 1, 1995.~~

"Competitive Provider" means an entity providing the same or equivalent services through the use of its own or leased facilities including resellers. The service must satisfy the Commission's rules of minimum service standards regardless of whether the provider is regulated by the Commission.

"Competitive service" means a telecommunications service determined by the Commission to be subject to effective competition for a relative geographic and service(s) market, after notice and hearing.

"Competitive Test" means an evaluation by the Commission to determine after notice and hearing, for a particular service on an exchange by exchange basis, the existence of competition among an ILEC, a non-affiliated facilities based Competitive Provider, and one (1) other non-affiliated Competitive Provider. Such exchanges shall be the same as those on file with the Commission on the date of approval of the Transition Plan.

~~**"Competitively neutral"** means not advantaging or favoring one person over another.~~

"Cramming" means the placement of unauthorized, misleading, or deceptive charges on a customer's telephone bill for products or services that were never ordered by the customer.

"Customer" means any person, firm, partnership, cooperative corporation, corporation, or lawful entity that receives regulated telecommunications services supplied by any telecommunications service provider or IXC.

"Customer trouble report" means any oral or written report given to a telecommunications service provider's repair service by an end-user of telephone services relating to a physical defect or difficulty or dissatisfaction with the provision of the telecommunications service provider's regulated services. Each trouble report shall count as a separate report regardless of whether subsequent reports relate to the same physical defect, difficulty, or dissatisfaction with the provision of the telecommunications service provider's regulated services.

"Data-only provider" means a company exclusively providing non-voice services, which, pursuant to OAC 165:55-3-1, has obtained a Certificate of Convenience and Necessity.

"Demarcation point" means the physical location at which responsibility for operating and maintaining facilities passes from one person to another.

"Deniable charge" means a charge for those regulated services for which nonpayment may result in a disconnection of basic local service.

"Dialing parity" means that a person that is not an affiliate of a telecommunications service provider is able to provide telecommunications services in such a manner that end-users have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications service provider of the end-user's designation from among two (2) or more telecommunications service providers.

"Directory" means the published listing of all telephone numbers, other than those requested by the end-user not to be published, for all end-users in a service area regardless of the local exchange telecommunications service provider selected by the end-user.

"Disconnection of service" means an arrangement made by the end-user or TSP for permanently discontinuing service by terminating the contract and/or removing the telephone service from the end-user's premises.

"Eligible ~~telecommunications carrier~~Telecommunications Carrier" ("ETC") means a ~~telecommunications service provider as~~common carrier designated by the Commission pursuant to OAC ~~165:55-17-29 and~~165:55-23-2 and 47 U.S.C. §§ 254 and 214(e).

"End-user" means the customer to whom a telephone number is assigned.

~~**"Enhanced service"** means a service that is delivered over communications transmission facilities that: (1) change the content, format, code or protocol of transmitted information; (2) provide the customer new or restructured information; or (3) involve end-user interaction with information stored in a computer.~~

~~**"Exchange"** means a geographic area established by an incumbent LEC as filed with and/or approved by the Commission for the administration of local telecommunications service in a specified area which usually embraces a city, town, or village and its environs. It may consist of one or more central offices together with associated plant used in furnishing telecommunications service in that area.~~

"Executing carrier" means any telecommunications carrier that effects a request that an end-user's telecommunications carrier be changed. A carrier may be treated as an executing carrier, however, if it is responsible for any unreasonable delays in the execution of carrier changes or for the execution of unauthorized carrier changes, including fraudulent authorizations.

~~**"Facilities"** means all the plant and equipment of a telecommunications service provider including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the regulated business of any telecommunications service provider.~~

"Facilities-based provider" means an entity providing telecommunications services predominately through the use of its own facilities, including UNEs, and other technologies capable of meeting all local telecommunications service requirements while complying with the Commission's quality of service rules.

"FCC" means the Federal Communication Commission.

"Filed" means to present a document to and have it accepted by the Office of the Court Clerk of the Oklahoma Corporation Commission.

~~**"Incumbent Local Exchange Company" ("incumbent LEC")** means, with respect to an area or exchange(s), any telecommunications service provider furnishing local exchange service in such area or exchange(s) within the State of Oklahoma on July 1, 1995, pursuant to a Certificate of Convenience and Necessity or grandfathered authority.~~

"ILEC" means an Incumbent Local Exchange Company.

"Individual Case Basis" ("ICB") means a condition, pursuant to the provisions of the tariff, in which the rates and charges for an offering are developed based on the circumstances of each customer.

"Initial Tariffs" means the first tariffs approved after, or in conjunction with, the granting of a Certificate of Convenience and Necessity.

~~**"Interexchange telecommunications carrier" ("IXC")** means any person, firm, partnership, corporation, or other entity, except incumbent LECs, resellers, or OSPs engaged in furnishing regulated interexchange telecommunications services under the jurisdiction of the Commission.~~

"Interexchange telecommunications service" means telecommunications service provided between locations within different certified telephone exchange service areas.

"InterLATA call" means any call which is originated in one LATA and terminated in another LATA.

"Interstate call" means any call which is originated in one state and terminated within the boundaries of another state.

"IntraLATA call" means any call which is originated and terminated within the boundaries of the same LATA, regardless of whether such call crosses LATA boundaries prior to reaching its termination point.

"Internet Subscriber Fee" means any fee that is paid to a telecommunications service provider for Internet service that is in addition to the access connection charge.

"Intrastate call" means any call which is originated and terminated within the boundaries of the State of Oklahoma, regardless of whether such call crosses state boundaries prior to reaching its termination point.

"LATA" means Local Access and Transport Area as defined in the Code of Federal Regulations, Title 47 Part 53.3.

"Less than Minimum Service Provider" means a CLEC which offers local exchange service that does not meet all minimum service standards, as set forth in OAC 165:55-13-10.

"Letter of Agency" ("LOA") means the written authorization that gives permission to change the customer's telecommunications services and/or the customer's provider or to share that customer's network information with representatives or associates of the telecommunication company or telecommunications carrier.

~~**"Local Exchange Service"** means a switched and/or dedicated telecommunications service which originates and terminates within an exchange or an exchange service territory. Local exchange service may be terminated by a telecommunications service provider other than the telecommunications service provider on whose network the call originated. The local exchange service territory defined in the originating provider's tariff shall determine whether the call is local exchange service.~~

"Local interconnection arrangements" means a contract for interconnection, including resale, as governed by section 251 of the Communications Act of 1934 (47 U.S.C. § 251), as amended, the Federal Communication Commission rules and the rules of the Commission.

"Local operator services" means the automatic or live assistance provided to a customer, which enables the customer to arrange for billing or completion of a local call. Local operator services may include, but are not limited to, line status verification, busy line verification, emergency interrupt, and calls to emergency numbers (e.g., 911).

"Long run incremental cost" ("LRIC") means the long run forward-looking additional cost caused by providing all volume-sensitive and volume-insensitive inputs required to provide the total demand associated with a service or network element offered as a service, using economically efficient current technology efficiently deployed. LRIC also equals the cost avoided, in the long run, when a service or network element offered as a service is no longer produced. LRIC excludes costs directly and solely attributable to the production of other services or network elements offered as services, and unattributable costs which are incurred in common for all the services supplied by the firm. The long run means a period long enough so that the cost estimates are based on the assumption that all inputs are variable.

"Network element" means a facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions and capabilities that are provided by means of such facility or equipment, including end-user

numbers, databases, signaling systems and information sufficient for billing and collection or used in the transmission, routing or other provision of a telecommunications service.

"Network interface" means the normal demarcation point separating the telecommunications service provider's regulated facilities and equipment from the unregulated facilities, equipment, or systems provided by the end-user. The provision of the network interface is the responsibility of the telecommunications service provider.

"New service provider" means a service provider that did not bill the end-user for service during the service provider's last billing cycle. This definition excludes service providers which bill the customer solely on a per transaction basis.

"New services" means any service(s), except access services or interconnection services, for which a rate element does not presently exist, which does not replace an existing service, and that enlarges the range of service options available to end-users.

"Nonbasic service" means any telecommunication service not included in basic local service, local interconnection arrangements and/or access service.

"Non-deniable charge" means a charge for those not-regulated services for which nonpayment shall not result in a disconnection of basic, local service.

"Not-regulated service" means the offering of service(s) where the rates and/or terms and conditions for such service(s) are not-regulated by the Commission. These would include any interstate services offered FCC tariffs or rules, and any taxes, fees and surcharges applicable to those services, as well as any intrastate services that are not regulated by the Commission.

"Number Portability" means the ability of end-users of telecommunications services to retain, within the same wire center, their existing telecommunications number without impairment of quality, reliability or convenience when switching from one telecommunications service provider to another.

~~**"Oklahoma Plan"** means an alternative regulation plan which conforms to Part 11 of Subchapter 5 of this Chapter.~~

"Packaging" means the sale of two or more services offered by or in conjunction with the services of a TSP to a customer of a TSP for a single price.

~~**"Person"** means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character.~~

"Rates" means all charges assessed by a TSP or IXC.

"Regulated telecommunications service" means the offering of telecommunications service(s) directly to the public where the rates and/or terms and conditions for such service(s) are regulated by the Commission. These would include services offered from intrastate tariffs approved by the Commission including any taxes, fees and surcharges applicable to those services, and interstate services when the Commission is enforcing the FCC slamming rules.

"Rural telephone company" means a LEC to the extent that such entity:

(A) Provides telecommunications service to any local exchange study area that does not include either:

(i) Any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the U.S. Bureau of Census; or,

(ii) Any territory, incorporated or unincorporated, included in an urbanized area, as defined by the U.S. Bureau of Census as of August 10, 1993.

(B) Provides local exchange service, including exchange access, to fewer than 50,000 access lines;

(C) Provides local exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or,

(D) Has less than fifteen percent (15%) of its access lines in communities of more than 50,000 on the date of enactment of the Federal Telecommunications Act of 1996.

"RUS" means the Rural Utility Services.

"Service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used. Service shall not include the provision of nontelecommunications services, including but not limited to the printing, distribution, or sale of advertising in telephone directories, maintenance of inside wire, customer premises equipment and billing and collection, nor does it include the provision of mobile telephone service, enhanced services and other not-regulated services.

"Service interruption" means service outage, total failure, or complete loss of service due to a trouble condition in the facilities of a telecommunications service provider.

"Service provider" means any entity that offers a product or service to a customer, the charge for which appears on the bill of the billing agent. This definition shall include only providers that have continuing relationships with the end-user that will result in periodic charges on the end-user's bill, unless the service is subsequently canceled.

"Service territory" means a geographic area served by a telecommunications service provider.

"Slamming" means the unauthorized switching of an end-user's telecommunications service provider or presubscribed IXC.

"Submit" means to present a document to the Director of the Public Utility Division.

"Submitting carrier" means any telecommunications carrier that requests on the behalf of an end-user that the end-user's telecommunications carrier be changed and seeks to provide retail services to the end-user. A carrier may be treated as a submitting carrier, however, if it is responsible for any unreasonable delays in the submission of carrier change requests or for the submission of unauthorized carrier change requests, including fraudulent authorizations.

"Supported Services" means services identified in 47 CFR part 54, ~~OAC 165:55-13-10~~ or OAC 165:59, as amended from time to time, for which ~~a wireless~~an ETC receives support from the federal USF, OUSF or OLF, or as otherwise may be ordered by the Commission.

"Suspension of service" means an arrangement made at the initiative of the TSP for temporarily discontinuing service

without terminating the contract or removing the telephone service from the customer's premises.

"SWBT" means Southwestern Bell Telephone Company ~~L.P.~~ d/b/a ~~SBC Oklahoma~~AT&T Oklahoma.

"Tariff" means all or any part of the body of rates, tolls, charges, classifications, and terms and conditions of service relating to regulated services offered, the conditions under which offered and the charges therefore, which have been filed with and approved by the Commission.

~~**"Telecommunications"** means the transmission, between or among points specified by the user of voice or data information of the user's choosing, without change in the form or content of the information as sent and received.~~

"Telecommunications carrier or Company" means a telecommunications service provider ("TSP") or an interexchange telecommunications carrier ("IXC").

"Telecommunications service provider" ("TSP") means all authorized providers of local exchange service, whether an incumbent LEC or a competitive LEC.

"Telephone bill" means a billing agent's invoice, issued in compliance with this Chapter, for products or services rendered by itself and by a service provider(s), if any.

"Telephone company" or "Company" means any person, firm, partnership, corporation, or other entity engaged in furnishing regulated local exchange telephone services under the jurisdiction of the Commission on July 1, 1995, pursuant to a Certificate of Convenience and Necessity or grandfathered authority.

"Terms of Service" means rates, charges and terms and conditions for regulated services that a TSP or IXC elects to post, in a searchable format, on a publicly availability website.

~~**"Transitional commitments"** means the commitments made by an ILEC in the State of Oklahoma pursuant to Part 9 or Part 11 of Subchapter 5 of this Chapter.~~

"Tribal Land" means any federally recognized Indian tribe's reservation, Pueblo, or Colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), Indian allotments; Hawaiian Home Lands-areas held in trust for Native Hawaiians by the state of Hawaii, pursuant to the Hawaiian Homes Commission Act, 1920 July 9, 1921, 42 Stat. 108, et.seq., as amended; and any land designated as such by the Commission for purposes of this subpart pursuant to the designation process in 47 CFR §54.412.

"Unauthorized carrier" means any telecommunications carrier that submits a change, on behalf of an end-user, in the end-user's selection of a provider of telecommunications service but fails to obtain the end-user's authorization verified in accordance with the procedures specified in this Chapter.

"Unauthorized change" means a change in an end-user's selection of a provider of telecommunications service that was made without authorization verified in accordance with the verification procedures specified in this Chapter.

"Unbundled network element" ("UNE") means a component of the ILEC's telecommunications network utilized to provide telecommunications services.

"Unbundling" means to provide to any telecommunications service provider nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms and conditions that are just, reasonable and nondiscriminatory.

"Unfilled application" means a firm application by an end-user for new service or a different class of service which has not yet been accomplished.

~~**"Wire Center"** means a geographic area normally served by a central office.~~

~~**"Wireless Telecommunications Carrier"** means a Commercial Mobile Radio Service provider as defined by the FCC, including 47 CFR §20.3, as may be amended from time to time.~~

"Wireless Provider" means provider of radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves and which permits a user generally to receive a call that originates and/or terminates on the public switched network or its functional equivalent, regardless of the radio frequencies used.

"Zone" means a service territory described as such by an incumbent LEC.

165:55-1-6. Relief from rules

Whenever compliance with any requirement of this Chapter would result in unreasonable hardship upon or excessive expense to the telecommunications service provider, IXC ~~or the~~an end-user, consumer or for other good cause shown, the Commission may, by order, waive or modify the requirements of this Chapter upon application of any interested person filed in accordance with the Commission's Rules of Practice, OAC 165:5. The Commission may grant temporary relief pending hearing.

165:55-1-7. Exceptions or variances

If a telecommunications service provider ~~seeks~~receives an exception or variance from this Chapter in its tariffs or terms and conditions of service, such exception or variance shall be clearly shown on such tariffs or terms and conditions of service, sufficient to plainly bring to the Commission's attention the exact nature of the said exception or variance. Any exception or variance not so marked or identified in such tariff or terms and conditions of service shall be superseded by this Chapter to the extent that said exception or variance is in conflict therewith. Upon approval by the Commission, the variance shall indicate the number of the pertinent Commission order.

165:55-1-8. Supremacy

(a) Every tariff, rule, regulation, or agreement relating to the subject matter of this Chapter is superseded by this Chapter and is deemed amended to conform with this Chapter~~, except with respect to the presently effective tariffs of IXCs, or competitive LECs which shall not be subject to traditional rate base/rate of return regulation and which shall be exempt from OAC 165:70, the Minimum Standard Filing Requirements, in connection with proposed rate changes~~.

(b) The interexchange portion of an IXC's business shall continue to operate under the regulatory requirements and procedures prescribed by their respective certification orders

and OAC 165:55-1-1, 165:55-1-3, 165:55-1-4, 165:55-1-5, 165:55-1-6, 165:55-1-11, 165:55-1-15, 165:55-1-16, 165:55-3-1, 165:55-3-2, 165:55-3-3, 165:55-3-22, 165:55-3-23, 165:55-5-3, 165:55-5-10, 165:55-5-10.1, 165:55-5-10.2, 165:55-5-10.4 165:55-5-11, 165:55-5-12.1, 165:55-5-13, 165:55-5-14, 165:55-5-20, 165:55-5-34, 165:55-5-35, 165:55-9-2.1, 165:55-15-1, 165:55-15-3, 165:55-15-5, 165:55-19-1, 165:55-19-3, and 165:55-21-1.

165:55-1-11. Severability

This Chapter will not relieve in any way a telecommunications ~~service provider, IXC~~carrier or end-user from any of its duties under the laws of this State or the United States. If any provision of this Chapter is held invalid, such invalidity shall not affect other provisions or applications of this Chapter which can be given effect without the invalid provision or application, and to this end, the provisions of this Chapter are declared to be severable. This Chapter shall not be construed so as to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of the Commission or the substantive rights of any person. The Commission may make exceptions to this Chapter for good cause shown.

165:55-1-16. Universal service

~~Pursuant to OAC 165:59-3-40~~Consistent with 17 O.S. §139.107, every entity that operates or provides telecommunications service within the State of Oklahoma shall contribute, on a nondiscriminatory basis, into the Oklahoma Universal Service Fund.

SUBCHAPTER 3. CERTIFICATES, REPORTS, AND RECORDS

PART 1. CERTIFICATES OF CONVENIENCE AND NECESSITY

165:55-3-1. Certificate of Convenience and Necessity

(a) **Requirement for Certificate of Convenience and Necessity.** No person, firm, association, corporation or cooperative shall furnish telecommunications service to any end-user or customer in the State of Oklahoma without first having secured a Certificate of Convenience and Necessity from the Commission.

(b) **Requirement for Certificate of Convenience and Necessity prior to receiving funding from the Oklahoma Universal Service Fund.** Any provider requesting funding from the Oklahoma Universal Service Fund for the provision of Special Universal Services shall first obtain a Certificate of Convenience and Necessity in the exchange where service is to be provided.

(c) **Application for Certificate of Convenience and Necessity.** Every provider of telecommunications services making application to the Commission for a Certificate of Convenience and Necessity in accordance with 17 O.S. §131 *et seq.* shall be required to demonstrate its financial, managerial and technical ability to provide the requested telecommunications services in the State of Oklahoma. An application for a certificate to provide telecommunications service in the State of Oklahoma shall be made pursuant to and in conformance with the requirements of Oklahoma law and any additional requirements set forth in this Chapter. An original and ~~eight (8)~~five (5) copies of the application for ~~Certificates~~Certificate of Convenience and Necessity shall be filed at the Commission's Office of the Court Clerk. A filing fee pursuant to the Commission's Rules of Practice, OAC 165:5, shall be required.

(d) **Application requirements for Certificate of Convenience and Necessity.** ~~Every telecommunications service provider or IXC making application to the Commission for a Certificate of Convenience and Necessity to provide telecommunications services in the State of Oklahoma shall be required to demonstrate its financial, managerial and technical ability to provide the requested telecommunications services in the State of Oklahoma.~~ An application for a Certificate of Convenience and Necessity shall include information and attachments which are certified as true and correct by an officer of any corporate applicant, or an authorized representative of an unincorporated applicant.

(1) The application shall contain the following information:

(A) The complete name, including any and all trade name(s) under which business will be conducted pursuant to 18 O.S. ~~(1991)~~ § 1140, corporate or other headquarters street address and names/addresses of principal or corporate officers of the entity proposing to sell telecommunications service to the public in the State of Oklahoma. The telephone number and, if applicable, the toll-free number will also be included.

(B) If different from those provided pursuant to subparagraph (1)(A) of this Section, the names and address(es) of all officers and corporate or primary offices of the applicant for a Certificate of Convenience and Necessity located in the State of Oklahoma and the name(s) and address(es) of senior management personnel responsible for Oklahoma operations.

(C) A written affirmation, signed before a Notary Public by someone with authority to bind the corporation or entity, containing the following statements:

(i) That the information contained in the application is true and correct;

(ii) That the applicant is familiar with and will comply with all federal and state laws, and the rules and orders of this Commission;

(iii) That for each area or exchange(s) an applicant proposes to serve, the applicant agrees to offer the provisioning of service to all end-users within that area or exchange(s) on a nondiscriminatory basis;

(iv) That the applicant understands the Commission's contempt authority;

(v) That the applicant will contribute to the Oklahoma Universal Service Fund pursuant to OAC 165:59;

(vi) That the applicant will comply with the provisions of 165:55-13-10.1 and will include a statement to this effect in its tariffs;

(vii) That the applicant either provides only data service, or that prior to commencing to provide local exchange service the applicant will notify each Public Safety Answering Point ("PSAP") within their service area that they will be providing service within the area served by the PSAP, and provide each PSAP with contact information in case there are issues with the completion of calls by the customers of the Applicant. The attachment shall also state that the Applicant will comply with the requirements of 17 O.S. § 131 and will collect and disburse the E911/911 fee as required by 63 O.S. § 2814. Such affirmation should also include a statement that applicant will provide proof to the Commission of such compliance within ~~30~~thirty (30) days following Applicant's initial provisioning of local service;

(viii) That the applicant understands that before it ceases, discontinues, or curtails operations and/or service, it must file with the Commission and provide each affected customer, in the manner required by the Commission, notice of the intended action, and must also provide notice to any E911/911 Database Management Service Provider, pursuant to OAC 165:55-15-5;

(ix) A statement that the applicant is not currently under investigation or involved in any pending or concluded investigations or litigation, either in this state or in another state or jurisdiction, for violation of any deceptive trade or consumer protection law or regulation, if that is the case;

(x) A statement that the applicant has not been fined, found guilty, sanctioned or otherwise penalized either in this state or in another state or jurisdiction for violation or any consumer protection law or regulation, if that is the case; and

(xi) If either of the statements required in (ix) and (x) above is untrue, a detailed explanation of the circumstances of the investigation or fine, sanction, or penalization including a detailed description of the cause(s), the number of customers involved, and current status of the proceeding.

(2) The attachments to the application shall include the following:

(A) Copies of the applicable Articles of Incorporation, Articles of Organization, and/or partnership agreement, and/or Joint Venture agreement and, where they exist, by-laws or operating agreement of the applicant for a Certificate of Convenience and Necessity and any entity or individual owning a whole or controlling interest in the applicant for a Certificate of Convenience and Necessity.

(B) A copy of the applicable certificate, issued by Oklahoma's Secretary of State, to transact business in the State of Oklahoma.

(C) A copy of the Corporate Trade Name Report, issued by Oklahoma's Secretary of State, shall be provided for each and every trade name utilized by the telecommunications service provider or IXC, i.e. a "d/b/a".

(D) Proof that the third-party surety bond, surety bond or letter of credit required in subsection ~~(f)~~(g) of this Section has been obtained, if applicable.

(E) Documentation indicating the applicant's organizational structure and ownership such as:

(i) For corporations, limited liability companies, partnerships and/or joint ventures, the applicant's stockholders annual reports and SEC 10Ks for the last three (3) years, if applicable, or, if the company is not publicly traded, its financial statements for the last three (3) years, if available, or other documentation as may be requested by the Commission.

(ii) A sole proprietor, as well as a limited liability company, shall provide financial statements for the last three (3) years, if available, or other documentation as may be requested by the Commission.

(F) A brief description of its history of providing the requested telecommunications service, or other telecommunications services, in order to demonstrate its managerial experience. The history shall include a list of the geographic areas in which it previously provided service and/or is currently providing service and such other documentation as may be requested by the Commission. Applicants for a Certificate of Convenience and Necessity without prior experience shall list the experience of each principal officer, partner, or the sole proprietor in order to demonstrate its managerial ability, and/or provide other documentation as may be requested by the Commission.

(G) A description of the applicant's experience in providing telecommunications services in order to demonstrate its technical abilities. In the case of applicants for a Certificate of Convenience and Necessity without prior experience, the applicant shall provide documentation which supports its technical abilities or other documentation as may be requested by the Commission.

(H) The name, address and toll-free telephone number that an end-user may contact concerning repairs and maintenance, complaints, billing questions, refunds and any other customer service-related inquiries.

(I) The contact name, address, and telephone number of the individual with overall responsibility for repairs and maintenance, complaints, billing questions, refunds, and any other customer service-related inquiries. This will be the principal contact for the Commission's Consumer Services Division regarding complaints involving the telecommunications service provider.

(J) The contact name, address and telephone number of the principal contact to be utilized by the Commission's Public Utility Division regarding any questions which are not related to customer service.

(K) A list of all other states, if any, where:

(i) The applicant is authorized to operate;

(ii) Authorization to operate is pending;

(iii) A request for authorization has been denied, including the reason stated for denial, with a certified copy of the denial document attached; and/or,

(iv) Authorization has been revoked, with a certified copy of the revocation document attached.

(L) A complete set of proposed initial tariffs which include the terms and conditions of service and all rates and charges for each service classification shall be in a format consistent with Subchapter 5 of this Chapter or a statement that the applicant will file tariffs pursuant to OAC 165:55-3-3. A company may elect to post Terms of Service on a publicly available website, subsequent to the approval of their initial tariffs.

(M) A description of the applicant's proposed service territory.

(N) A description of the deposit, if the applicant intends to collect deposits, and disconnection rules to be applied to end-users by the applicant, all of which shall conform to Subchapters 9 and 11 of this Chapter.

(O) A statement setting forth the accounting system to be utilized by the applicant (the FCC-approved Uniform System of Accounts or another accounting system) and a Chart of Accounts.

(P) A listing of the complete name(s), including any trade name(s), corporate or primary headquarters street address(es) and names/addresses of principal officers of any affiliates and/or subsidiaries providing telecommunications and/or other services to the entity making the application proposing to sell the requested telecommunications service to the public in the State of Oklahoma, unless otherwise ordered by the Commission.

(Q) An affirmation that the Applicant will maintain a record of complaints in a manner consistent with OAC 165:55-3-23.

(R) A copy of the applicant's proposed letter of authorization to be used by the telecommunications service provider to obtain written authorization from an end-user to switch telecommunications service providers or a copy of the text of the proposed script of the verification, which must be approved by the Director of the Public Utility Division, consistent with OAC 165:55-19-1.

(S) A statement regarding whether the applicant intends to utilize the services of a billing agent to issue bills to end-users.

(3) The Public Utility Division Staff may issue data requests for additional information during its initial review of an application.

(4) ~~The final contract(s),~~Agreements in accordance with OAC 165:55-17-7, if any, between telecommunications service providers shall be provided to the Public Utility Division as soon as such ~~contract(s)~~agreement(s) become available. Protective relief may be sought pursuant to 51 O.S. § 24A.22.

(e) **Requirements for expanding authority under an existing CCN.** An Applicant wishing to expand its service authority under an existing Certificate of Convenience and Necessity granted pursuant to Chapters 55, 56, 57 and/or 58, must make application to the OCC and provide all information and notice as required in Sections 165:55-3-1(c) and 165:55-3-2. However, information submitted in support of a previous Application for certification, if such Application was approved by the OCC, may be used in support of the current Application by providing a written affirmation, signed before a Notary Public, and by someone with authority to bind the Applicant, stating that the previously submitted information is still true and correct, and circumstances have not changed. If the previously submitted information is no longer true and correct, or if circumstances have changed, Applicant shall submit updated information along with a written affirmation fully explaining all changed circumstances. This section shall not apply to an Applicant wishing to expand its existing service territory granted under an existing CCN. Such an application shall be filed pursuant to OAC 165:55-17-3.

~~(f) **Notice requirements of CCN applications.** Applicants for a Certificate of Convenience and Necessity shall provide Notice of the Application to be given by mail electronic mail or personal service to the Attorney General of the State of Oklahoma and the governing body of each Enhanced 911 Public Safety Answering Point (E911 PSAP) operating in the proposed service territory of the Applicant. In addition, at the time the Application is filed, the Applicant shall provide an electronic copy of Notice of the Application, to the Director of the Public Utility Division for posting on the OCC website. The Director of the Public Utility Division will then place the Notice on the OCC website within five (5) business days. The address of the Commission's website is http://www.occeweb.com.~~

(~~g~~f) **Approval requirement.** No Certificate of Convenience and Necessity shall be granted except by order of the Commission, after notice and hearing, if any, as directed by the Commission or unless otherwise provided in this Chapter, or by the laws of the State of Oklahoma. An application for Certificate of Convenience and Necessity filed pursuant to this Section will be deemed granted thirty (30) days after the posting of the notice on the OCC website required by OAC 165:55-3-1(e) or the first day of publication required by 17 O.S. §132 whichever is later, unless an objection is filed in advance of the thirtieth day alleging that a hearing is required. In the event that the application for Certificate of Convenience and Necessity is deemed approved, the Commission shall issue an Order granting the Certificate of Convenience and Necessity within a reasonable time.

(~~h~~g) **Surety requirements for an applicant for Certificate of Convenience and Necessity.** To insure the protection of the applicant's end-users, the applicant that intends to collect

deposits from end-users, for a Certificate of Convenience and Necessity shall maintain a third-party surety bond, surety bond or irrevocable letter of credit, as may be determined by the Commission during the certification process, as set forth in this subsection.

(1) An applicant that does not have at least one million dollars ($1,000,000) net book value invested in telephone plant and/or telephone facilities located in Oklahoma shall be required to post and maintain a third-party surety bond, surety bond or irrevocable letter of credit in, at a minimum, an amount sufficient for the indemnification of one hundred ten percent (110%) of its projected customer deposits.

(2) The third-party surety bond, surety bond or irrevocable letter of credit shall be maintained as long as the telecommunications service provider is furnishing telecommunications services in the State of Oklahoma pursuant to this Chapter, unless modified or released pursuant to Commission order.

(3) The Commission may modify the requirements of this subsection for good cause shown, after such notice and hearing, if any, as the Commission may require.

(~~i~~h) **Transferability of certificates.** Any certificate granted under this section shall not be transferable without prior approval of the Commission and shall continue in effect until further order of the Commission.

(~~j~~i) Prior to providing service in Oklahoma, the Applicant shall jointly test interoperability with the 911/E911 PSAPs in their service area and provide verification of interoperability to the Commission and the PSAP.

165:55-3-2. Notice requirements when filing an Application~~of hearing~~ for Certificate of Convenience and Necessity

~~Notice of a hearing concerning the merits of an application for a Certificate of Convenience and Necessity shall be given by publication. At least thirty (30) days prior to the hearing, the applicant shall cause notice of the hearing to be published once a week for two (2) consecutive weeks in a newspaper of general circulation in each exchange where service will be offered. Publication shall be at the expense of the applicant and shall be made in a newspaper which has met the statutory requirements for publication of legal notices. A "Proof of Publication" document shall be filed in the cause with the Commission's Office of the Court Clerk within seven (7) days of the last publication date.~~

Applicants seeking a Certificate of Convenience and Necessity shall meet all notice requirements as set forth in this Section.

(1) **Requirements for filing an Application of a Certificate of Convenience and Necessity.** An Application of a Certificate of Convenience and Necessity shall be delivered by mail, electronic mail or by personal service to the following people and/or entities:

(A) The Attorney General of the State of Oklahoma;

(B) The Director of the Public Utility Division of the Oklahoma Corporation Commission;

(i) The Application delivered to the Director of the Public Utility Division shall be file-stamped by the Oklahoma Corporation Commission Court Clerk's Office and shall be delivered to the Director of the Public Utility Division in electronic copy form only.

(ii) The Director of the Public Utility Division shall place the Application of Certificate of Convenience and Necessity on the Commission's website, http://www.occeweb.com, within five (5) business days of receipt.

(C) The governing body of each Enhanced 911 Public Safety Answering Point (E911 PSAP) operating in the proposed service territory of the Applicant.

(D) The ILEC in the proposed service territory.

(2) **Publication of a Notice of Application of a Certificate of Convenience and Necessity.** The Notice required by 17 O.S. §132 shall be published as follows:

(A) In a newspaper of general circulation once a week for two (2) consecutive weeks with at least seven (7) days apart in every proposed service territory of the Applicant.

(B) Publication shall be at the expense of the applicant.

(C) A "Proof of Publication" document shall be filed with the Oklahoma Corporation Commission Court Clerk's Office within fifteen (15) days of the last publication date.

(3) **Requirements for a Notice of Hearing on an Objection to a Certificate of Convenience and Necessity.**

(A) When an objection is made in a cause of an Application of a Certificate of Convenience and Necessity, the Applicant shall promptly file a Notice of Hearing at the Oklahoma Corporation Commission Court Clerk's office requesting a date for a hearing on the merits of the application.

(B) Within ten business days prior to the date of the hearing, the Applicant shall serve the notice by delivering a file-stamped copy by mail, electronic mail or by personal service to the following people and/or entities:

(i) The Attorney General of the State of Oklahoma;

(ii) The Director of the Public Utility Division of the Oklahoma Corporation Commission; and

(iii) Any Interveners, including the person or entity filing the objection.

165:55-3-3. Approval of initial tariffs

(a) No later than twelve (12) months after being granted a Certificate of Convenience and Necessity, pursuant to OAC 165:55-3-1, a telecommunications service provider, or IXC shall file an application requesting approval of ~~a complete set of proposed~~its initial tariffs, unless filed pursuant to OAC 165:55-3-1~~(c)~~(d)(2)(L), which include the terms and conditions of service and all rates and charges for each service classification, in a format consistent with Subchapter 5 of this Chapter.

(b) The initial tariffs shall not become effective except by order of the Commission after such notice and hearing, if any, as directed by Commission.

(c) Not later than thirty (30) days after approval of the initial tariffs, an original and two (2) copies of the approved tariffs, which conform to OAC 165:55-5-20, shall be provided to the Public Utility Division.

(d) With the application requesting approval of a complete set of proposed initial tariffs, the telecommunications service provider, or IXC, shall file proof that the third-party surety bond, surety bond or letter of credit required in OAC 165:55-3-1(f) has been obtained, if applicable.

PART 5. RECORD REQUIREMENTS

165:55-3-21. Retention of records

All records required by this Chapter shall be preserved for two (2) years, except for an ETC's records confirming subscriber's eligibility for purposes of the State and/or Federal Lifeline programs as well as the records confirming household eligibility for State and/or Federal Lifeline support. Records confirming subscriber and household eligibility for purposes of initial or annual recertification for State or Federal Lifeline programs shall be kept for three (3) years.

165:55-3-22. Records to be provided to the Commission

(a) **Annual report of operations.** Each telecommunications service provider and IXC shall provide to the Director of the Public Utility Division an annual report, in a format developed by the Director of the Public Utility Division, no later than May 1 of the year following the reporting year. Proposed revisions to the Annual Report format will be posted to the OCC website at least ~~90~~ninety (90) days prior to their effective date. All carriers will be notified of the posting via e-mail, based on addresses supplied by carriers. Any carrier that objects to the proposed revisions to the Annual Report format may file an Application with the Commission requesting relief from the applicability of the format changes. The filing of an Application will suspend the applicability of the proposed format revisions until an Order is issued by the Commission. Unless an Order revising the Annual Report format is entered at least 90 days prior to the May 1 filing deadline, carriers will not be required to file an Annual Report in the revised format until the following year.

(b) **Confidentiality of annual report.** All non-publicly available information included in the annual report or an ETC's FCC Form 481 or FCC Form 555 will be considered confidential by the OCC.

(c) **Proof of third-party surety bond, surety bond or irrevocable letter of credit.** Where applicable, not later than May 1 of each year, each telecommunications service provider and IXC which does not have at least one million dollars ($1,000,000) net book value invested in telecommunications plant and/or telecommunications facilities located in the State of Oklahoma, shall provide annually, to the Director of the Public Utility Division, proof of the continuing existence and sufficiency of the required third-party surety bond, surety bond or irrevocable letter of credit providing coverage at a level of at least ~~110%~~one hundred and ten percent (110%) of customer deposits. Such proof shall be in a format developed by the Director of the Public Utility Division and approved by the Commission.

(d) **Exchange maps.** Each telecommunications service provider shall provide the Director of the Public Utility Division two (2) copies of updated exchange maps when the boundaries of an exchange(s) are changed. The maps and descriptions shall be in sufficient detail to permit the location of exchange boundaries on the ground, and be consistent with the format set forth in this subsection.

(1) Each exchange map provided after the effective date of this Chapter shall conform to the following:

(A) One exchange service area per sheet.

(B) Each map shall be on eight and one-half by eleven inches (8.5" x 11") (or larger sheet which folds down to eight and one-half by eleven inches (8.5" x 11"), twenty pounds (20 lbs.) or heavier, white paper.

(C) Each township and range will be specified along the side of the map and as a minimum each corner section will be numbered.

(D) The outline of the exchange service area will be a heavy black line with an "E" every one inch (1") or two inches (2") along the boundary.

(E) The name of adjacent incumbent LEC exchanges will be indicated on the exchange map to identify their relative location.

(2) When said boundary map changes involve more than one telephone exchange and more than one incumbent LEC, the changes involved shall be coordinated between the incumbent LECs concerned and a "Joint Application" submitted. After an order is issued by the Commission the incumbent LECs shall submit revised exchange maps containing the revised territory, the new certificate number, the cause number, the order number, and the date of the order approving the change. A copy of each current exchange map shall be made available for review to any interested person upon reasonable notice containing:

(A) Application number.

(B) Maps showing the changes in contrasting colors.

(C) Metes and bounds of changes.

(D) Proposed orders (one for each exchange) with complete metes and bounds of the revised exchange(s).

(e) **Competitive LEC service territories maps.** Each competitive LEC shall either identify the LEC exchanges of their service territory or maintain up-to-date maps showing its service territory. The maps and descriptions shall be in sufficient detail to establish the location of incumbent LEC exchange boundaries on the ground. Each map provided shall conform to the format set out in OAC 165:55-3-22(c)(1). Two (2) copies of each map shall be provided to the Director of the Public Utility Division.

(f) **Contracts and agreements.** Upon request by the Director of the Public Utility Division, a TSP or IXC shall provide a copy of a contract entered into by the TSP or IXC for regulated services.

(g) **Contact names.** Each telecommunications service provider and IXC shall notify, in writing, the Director of the Public Utility Division and the Director of the Consumer Services Division within thirty (30) days of a change in the company-designated contacts for Public Utility Division and Consumer Services Division issues.

(1) The update shall include the name(s), physical street address(es), electronic mail addresses and telephone number(s) of the designated individual(s).

(2) The contact name(s) provided pursuant to this subsection shall be the individual(s) primarily responsible for:

(A) Providing customer service;

(B) Repair and maintenance;

(C) Answering complaints;

(D) Authorizing and/or furnishing refunds to customers; and,

(E) Tariff issues.

(h) **Other information.** Each telecommunications service provider and IXC shall promptly furnish such other information as the Commission Staff may request, unless otherwise ordered by the Commission.

165:55-3-23. Complaints report

Each telecommunications service provider and IXC shall maintain customer complaints that have been received by the company. These should be maintained for a period of no less than two (2) years.

SUBCHAPTER 5. RATES AND TARIFFS

PART 1. TARIFF FILING

165:55-5-2. Contents of tariffs

Except as provided in OAC 165:55-5-1, every telecommunications service provider shall file with the Commission its tariffs containing detailed schedules of its rates and charges for all intrastate regulated telecommunications services. The tariffs shall be in sufficient detail and shall be accompanied by such explanatory material, so as to permit determination of the applicability of the tariff. For standard services, the tariff should be structured to permit determination of the exact charges from the tariffs alone. Services, whose rates and charges are determined on an individual case basis, need not indicate the exact charges in the tariff. Related provisions, such as the circumstances under which ~~service is~~services are available, classes of service offered, and line extension policy, will be set out in the tariff or by reference to other filed tariffs. Unless provided otherwise in this Chapter, no tariff shall be effective except by order of the Commission or otherwise pursuant to the laws of the State of Oklahoma.

PART 3. APPROVAL AND NOTICE REQUIREMENTS

165:55-5-10. Tariff approval and revisions to tariffs

(a) Except as provided in OAC 165:55-5-1 no new or revised tariff shall be effective without Commission order after notice and hearing, if any, as directed by the Commission unless otherwise provided in this Chapter, or by the laws of the State of Oklahoma. Tariffs filed under this section will be deemed lawful and effective thirty (30) days after filing unless an objection is filed in advance of the thirtieth day that a hearing is required.

(b) Notwithstanding the provisions of subsection (a) of this Section:

(1) New or revised tariffs describing a regulated service may be submitted in accordance with subsection (c) of this section unless otherwise prohibited by this Chapter, including but not limited to, subsection (b)(2) of this section ~~and OAC 165:55-5-10.1(e),~~ or by the laws of the State of Oklahoma.

(2) No new or revised tariff describing a switched access service, E911/911 service, or payphone access service, shall become effective without Commission order after notice and hearing, if any, as directed by the Commission.

(3) A packaged service may include any combination of basic local services, regulated services and non-regulated services. A packaged service shall be treated as a single optional service by the Commission. A packaged service may be submitted in accordance with subsection (c) of this section unless otherwise prohibited by this Chapter or by the laws of the State of Oklahoma.

(4) Any tariffed service utilizing ICB pricing, or amendment thereto, shall become effective without Commission order according to the terms of the agreement with the customer and/or the provider's tariffs.

(c) To the extent that this Chapter allows the submission of new or revised tariffs, new or revised tariffs shall have an effective date on or after the day following the day the submission is delivered to the Director of the Public Utility Division, subject to the following conditions:

(1) The submission delivered to the Public Utility Division shall include a cover letter, three (3) mark-up copies of the new or revised tariff pages in legislative format, and three final copies of the new or revised tariff pages.

(2) The effective date of the new or revised tariff submitted to the Commission shall be stated on the face of the new or revised tariff pages.

(3) A new or revised tariff submitted to the Commission shall comply with the notice requirements of OAC 165:55-5-11. A copy of the notice shall accompany the submission. The submission shall clearly identify the date of notice and the method used to provide notice.

(4) The Commission may permit electronic submission of new or revised tariffs when technically feasible.

(d) The Public Utility Division may, after an informal investigation, file an application with the Commission seeking to revoke or modify any tariff. After notice and hearing, the

Commission may issue an order prospectively revoking or modifying any tariff for good cause.

(e) The burden of proof to show that a proposed or revised tariff is just and reasonable shall be upon the company proposing the new or revised tariff.

(f) The Commission shall protect against anti-competitive behavior and the abuse of monopoly power by rejecting, revoking or modifying tariffs that are predatory, anti-competitive or discriminatory. In its review, the Commission may consider the incremental cost of the service, the potential impact on competition, the potential impact on end-users generally, and such other factors as the Commission may deem necessary. The Commission maintains the same authority to review the Terms of Service that are posted on the publicly available website, of a telecommunications service provider or IXC, as permitted by OAC 165:55-5-10. This retention of authority shall not be interpreted to mean that the Commission has approved the Terms of Service.

(g) Unless otherwise ordered by the Commission, all proposed rates must cover the ~~long run~~ long-run incremental cost of the service, including imputation where ordered by the Commission.

(h) For purposes of this Section, the Commission shall allow an ILEC or CLEC that serves less than seventy-five thousand (75,000) access lines as of July 1, 1997, at the option of the company, to adopt the cost studies approved by the Commission for an ILEC or CLEC that serves seventy-five thousand (75,000) or more access lines or to adopt the surrogate cost studies approved by the FCC.

(i) Nothing in these rules is intended to modify, affect or nullify the responsibilities of the Commission or providers of telecommunications services as required by state or federal antitrust laws or the Communications Act of 1934, as amended by the Telecommunications Act of 1996.

165:55-5-10.2. Promotional offerings

(a) ~~Promotional offerings may be offered that are beneficial to the targeted and/or qualified customers.~~Telecommunications service providers or IXCs may offer Promotional rates and/or terms and conditions of service for any purpose. Promotional offerings are not intended to replace any obligation of a TSP or IXC to submit tariffs or to post the Terms of Service.

(b) TSPs and IXCs must maintain a log of all current promotional offerings and shall provide the log to the Commission upon request.

165:55-5-10.3. Customer-specific contracts under ICB pricing

(a) ~~A TSP or IXC~~Telecommunications service providers or IXCs may enter into customer-specific contracts for business services provided that the pricing is not predatory.

(b) At the direction of the Commission, the Director of the Public Utility Division shall periodically select a sample of ICBs for review. If a review of any ICB reveals that said ICB is not fair, just, reasonable, not priced at or above LRIC, or not in the public interest, the Commission may issue an order to revoke the TSP's or IXC's ability to enter into ICBs until further order of the Commission.

165:55-5-11. Type of notices

(a) **Notice.** Except with respect to tariffs filed pursuant to OAC 165:55-5-10(b) or where the Commission, by order, directs otherwise, any notice of hearing on an application for approval or amendment of rates or charges for service shall be published once a week for two consecutive weeks in a newspaper(s) of general circulation within the territory served by the telecommunications service provider.

(b) **Notice of tariff revisions and new service offerings by telecommunications service providers.** Telecommunications service providers shall serve proposed tariff revisions for switched access, payphone access, or E911/911 services on the Office of the Attorney General at the time of their filing with the Commission, and shall provide a copy of their proposed tariff revisions pursuant to OAC 165:55-5-10 to each IXC and telecommunications service provider that has previously requested in writing to receive such filings. Notice of tariff revisions to E911/911 services shall also be provided to the governing body of each E911/911 Public Safety Answering Point operating in the service territory of the TSP.

(c) **Notice requirements.** All entities seeking to interconnect with the ILEC, including CLECs and Wireless providers, shall provide Notice of the Application to be given by mail, electronic mail or personal service to the Attorney General of the State of Oklahoma and each E911 Public Safety Answering Point within the territory of the service area affected by the proposed Agreement. Each governmental entity operating an E911 ~~PSAP~~Public Safety Answering Point that wishes to receive notice of interconnection agreement approvals shall register its contact persons with the Commission.

(d) **End-user notice of rate increase.** Prior to or concurrent with the effective date of any increased rate to an end-user, each telecommunications service provider or IXC shall provide notice to the Director of the Public Utility Division, the Office of the Attorney General and the affected end-users of the rate increase. The notice shall be provided by any of the following:

(1) Prominent display on the end-user's bill;

(2) Direct mailing;

(3) Prominent display on an insert in the end-user's bill; or

(4) Any other method approved by the Director of the Public Utility Division.

(e) **Notice of rate increase to the OCC and Attorney General.** The notice required by Subsection ~~(c)~~(d) above to be given to the Director of the Public Utility Division and the Office of the Attorney General shall be given by any of the following:

(1) Direct mailing or email;

(2) Through a website posting of all customer notifications and Terms of Service changes; or

(3) Identification on the website posting of the effective date of the Terms of Service.

(f) **End-user notice of service offering restrictions/limitations.** Any restrictions/limitations imposed for "non-voice"

minutes of use beyond a maximum identified in the provider's tariff shall be noticed under the following conditions:

(1) Written notice of the restriction/limitation and clear and concise explanation of when the penalty is imposed will be given to the end-user(s) prior to or concurrent with the initial bill for the service offering which contains the restriction/limitation. The notice will advise the end-users of the exact restriction/limitation and the penalty assessed.

(2) The notice shall be provided by any of the following:

(A) Prominent display on the end-user's bill;

(B) Direct mailing;

(C) Fulfillment and/or welcome packages;

(D) Prominent display on an insert in the end-user's bill; or

(E) Any other method approved by the Director of the Public Utility Division.

(g) Failure to provide the information required by this Section at the time of filing may result in the proposed tariff revision(s) and/or new service offering(s) being suspended pursuant to OAC 165:55-5-13 and, if suspended, the tariff revision(s) and/or new service offering(s) shall not be placed into effect under any circumstances, until further order of the Commission.

165:55-5-14. Objections

(a) Any person may file an objection to a proposed tariff revision or Terms of Service within ~~45~~ forty-five (45) days after the tariff is filed or Terms of Service revisions are posted on the telecommunication service provider's or IXC's publicly available web site.

(b) Any such objection shall comply with the requirements of OAC 165:5-9-2 and must contain a specific description of the basis for the objection and all information necessary to allow evaluation of the objection. The objecting person shall promptly serve its objections on the IXC or telecommunications service provider that filed the proposed changes, new service offering, or revised Terms of Service; and upon the Director of the Public Utility Division and the Attorney General.

PART 5. TARIFF STRUCTURE AND COMPOSITION

165:55-5-20. Requirements as to size, form and identification of tariffs

(a) Except as provided for in OAC 165:55-5-1, when applying for, or after receiving, a Certificate of Convenience and Necessity for authority to operate as a telecommunications service provider or IXC in the State of Oklahoma, the telecommunications service provider or IXC shall file with the Commission an original and ~~eight (8)~~five (5) copies of its tariff containing schedules of all its rates, tolls, charges, rules, and regulations pertaining to all of its telecommunications services. It shall also file an original and ~~eight (8)~~five (5) copies of each subsequent revision. Each revision shall be accompanied by a cover page which contains a list of the pages being revised, a statement describing each change, its effect, if any, and a statement as to the impact on rates of the change by customer class, if any. The telecommunications service provider shall also file a copy of the current tariff page with changes superimposed thereon. If a proposed tariff revision constitutes an increase in existing rates of a particular customer class or classes, the Commission shall require that notice be given to the affected customer class.

(b) All tariffs shall be in loose-leaf form of a size eight and one-half by eleven inches (8 1/2" x 11"), in 10 point or larger type and shall be plainly printed or reproduced on paper of good quality. The front page of the tariff shall contain the name of the telecommunications service provider, including all trade names under which the telecommunications service provider is providing telecommunications service in the State of Oklahoma, and the location of its principal office. Incumbent LEC local exchange tariff map sheets reflecting the physical bounds of the exchange may be on larger sheets, when required for the purposes of clarity and legibility.

(c) Each rate tariff must clearly state the territory, city, county, or exchange wherein said tariff is applicable.

(d) Tariff sheets are to be numbered consecutively per schedule. Each sheet shall show the Cause Number wherein the tariff was approved by the Commission and, where applicable, the Order Number for such approval. Each sheet shall show an effective date, a revision number, section number or title, sheet number, name of the telecommunications service provider, along with all trade names used in the State of Oklahoma, and the name of the tariff, each in a consistent manner. Sheets issued under new numbers are to be designated as original sheets. Sheets being revised should show the number of the revision, and the sheet numbers shall be the same.

PART 7. MISCELLANEOUS TARIFF AND/OR TERMS OF SERVICE REQUIREMENTS

165:55-5-34. Data and information on proposed tariff revisions

(a) Except as otherwise provided for in OAC 165:55-5-35, when filing proposed tariff revisions for ~~noncompetitive and new services~~switched access service, E911/911 service or payphone access service, as provided in OAC ~~165:55-5-10(b)~~165:55-5-10(b)(2) at least twenty (20) days prior to the effective date of the filing, each IXC and telecommunications service provider shall deliver to the Public Utility Division Staff and Office of the Attorney General:

(1) A copy of the Notice required by OAC 165:55-5-11(d) that will be sent to the end-users affected by any increased rate or Notice required by OAC 165:55-5-11(f) that will be sent to the end-users affected by the restriction/limitation(s);

(2) ~~A customer impact study which shows the number of Oklahoma customers affected, and the dollar and percentage impacts of the proposed change(s) on Oklahoma customers' rates;~~

~~(3)~~ A telecommunications service provider offering packages of bundled services containing both regulated

and non-regulated services, or both intrastate and interstate services shall, at the time of filing or submitting the bundled packages to the Public Utility Division, provide the methodology used to separate revenues in order to identify jurisdictional revenues to be assessed for funding state regulatory fees and assessments~~.~~

~~(4) The total revenue impact in Oklahoma of the proposed change(s)~~;

~~(5) If the Oklahoma specific information required by paragraphs (2) and (3) of this subsection is unavailable, a statement that so states; and~~

(~~6~~3) The rationale for the proposed tariffs.

(b) Consistent with OAC 165:55-5-20(a), a copy of the existing tariff page(s) with the requested change(s) denoted shall be filed with the application, and shall be included in the copy sent to the Attorney General, but need not be included with copies of the tariff revision sent to the service list.

(c) The information addressed in paragraphs (2)~~, (4) and (5)~~and (3) in subsection (a) of this Section will be accepted, but not required to be provided, from IXCs.

(d) ~~In addition to the foregoing information and concurrent with the filing of a proposed rate increase or proposed new service offering, unless provided on line and available for public viewing, the telecommunications service provider shall deliver to the Public Utility Division Staff a comparison of the proposed tariff and the tariffs of the applicant in effect in Arkansas, Kansas, Missouri and Texas, to the extent the provider operates in such states. The telecommunications service provider shall provide the URL, section, and page number where the tariffs may be viewed, if available on the Internet website.~~

~~(e)~~ The Public Utility Division may issue data requests for additional relevant information during its review of the requested revision(s). Each telecommunication service provider and IXC shall answer, within ten (10) business days from the date of receipt, all data requests issued, unless an objection is filed or the parties agree in writing to a different response time.

(~~f~~e) Failure to provide the information required by this Section at the time of filing may result in the proposed tariff revision(s) and/or new service offering(s) being suspended pursuant to OAC 165:55-5-13 and, if suspended, the tariff revision(s) and/or new service offering(s) shall not be placed into effect under any circumstances, until further order of the Commission.

165:55-5-35. Confidential information

(a) With the exception of information and data related to the dollar and percentage impacts of the proposed change(s) on end-user rates and the rationale for the proposed tariffs, all information and data required by OAC 165:55-5-34(a), ~~OAC 165:55-5-10.1~~, OAC 165:55-5-10.2, and OAC 165:55-5-10.3 to be delivered to the Public Utility Division Staff concurrent with the filing of a proposed tariff revision or notification of a promotional offering and any additional financial or cost data or data that is identifiable to a specific customer requested by the Public Utility Division Staff, shall be deemed confidential records or trade secrets of the telecommunications service provider and IXC under the Oklahoma Open Records Act as provided for by 51 O.S. § 24A.22 and shall be kept confidential by the Commission, unless successfully challenged.

(b) All confidential information and data submitted to the Public Utility Division Staff under subsection (a) of this Section shall be conspicuously labeled "Confidential information and data submitted pursuant to OAC 165:55-5-35."

(c) For each tariff filing submitted by a telecommunications service provider or IXC in accordance with OAC 165:55-5-10(b), ~~OAC 165:55-5-10.1,~~ OAC 165:55-5-10.2, or OAC 165:55-5-10.3, the same confidential information and data provided to the Public Utility Division Staff shall also be provided to the Office of the Attorney General upon the signing of a Proprietary Agreement by the Attorney General or its representative.

(d) All confidential information and data provided to the Office of the Attorney General under subsection (c) of this Section shall be conspicuously labeled "Confidential information and data submitted pursuant to OAC 165:55-5-35."

165:55-5-36. Returned Check Charge [REVOKED]

~~Any provider of telecommunications services may impose a returned check charge of up to $25, provided that customers are notified in advance of the charge via their monthly bills or inserts. Requests for returned check charges in excess of $25 must be supported by cost justification submitted to the Director of the Public Utility Division and the Attorney General.~~

SUBCHAPTER 7. DIRECTORIES, TELEPHONE NUMBERS, AND CUSTOMER-PROVIDED EQUIPMENT

165:55-7-1. Telephone directories

(a) **Provision of directory to end-users; frequency.** Each telecommunications service provider shall provide in conjunction with the provisioning of local exchange service, or make arrangements to provide to its end-users an alphabetical telephone directory for each service territory, exchange or group of exchanges. Telecommunications service providers may furnish white page directories in a variety of electronic formats, including CD-Rom, via the internet, or as printed directories. Such directory shall be issued at intervals consistent with satisfactory service, which, in the absence of unusual circumstances, will be at least once each year. If any alternative to a printed paper directory is provided, customers are also to be furnished with notification at the time the directory is issued that they may request a printed version of their local directory at no charge. The notification shall also include a toll free number established for honoring such customer requests. A directory for an exchange or calling area may be issued. ~~A printed copy of each directory published, which contains exchanges located in the State of Oklahoma, shall be furnished to the Commission and the Director of the Public Utility Division (Oklahoma exchanges only).~~

(b) **Listing in directory.** Each telecommunications service provider shall provide its end-users in conjunction with the provisioning of local exchange service, without charge,

one listing in the white page directory issued pursuant to this Chapter and inclusion in a database used to provide directory assistance for the end-user's geographic area. ~~A request by an end-user that their listing or address be omitted from the directory or directory assistance database shall be honored by the telecommunications service provider, in accordance with tariff provisions and there will be no charge for nonpublication if the residential end-user has at least one listing in the directory. Additional listings shall be offered in accordance with approved tariffs. End-user listings in a white page directory or directory assistance data base shall be treated in a nondiscriminatory manner, regardless of the end-user's telecommunications service provider.~~

(c) **~~Form of listing in directory.~~** ~~The form, location and appearance of directory listings of end-users, regardless of the end-user's telecommunications service provider, shall be provided in a nondiscriminatory manner, subject to review by the Commission.~~

~~(d)~~ **Provision of directory.** Unless the Commission directs otherwise each~~Each~~ customer shall be furnished at the customer service address, one (1) directory for each access line being furnished him under current tariffs, unless the customer and the telecommunications service provider agree this requirement can be fulfilled in an alternative manner. Each telecommunications service provider shall make available its directory to telecommunications service providers for distribution to their end-users.

(~~e~~d) **Contents of directory.** The directory provided to end-users pursuant to this Section shall contain the following information:

(1) Minimum requirements. Each telecommunications service provider shall assure that its end-users receive a directory which includes the following information:

(A) The name of the exchange or area covered and the date of issue on the front cover;

(B) Emergency numbers;

(C) Instructions to access directory assistance;

(D) Instructions to access repair service;

(E) Instructions for placing long distance and local calls;

(F) Instructions for obtaining an itemization of the end-user's current monthly statement;

(G) Instructions to access Telecommunication Relay Service; and

(H) A notice prominently displayed on the table of contents page which shall state: "This directory contains important information about your rights as a telephone end-user on page (Here the telecommunications service provider will insert the page number on which the notice shall appear)". In the absence of a table of contents page, said notice shall be prominently displayed on the inside of the front cover.

(2) A statement shall be submitted to the ~~Public Utility~~Consumer Services Division of the Commission for approval, at least thirty (30) days prior to being submitted for publication in a directory or distributed as a mailing or otherwise. Unless notified to the contrary by the ~~Public Utility~~Consumer Services Division within fifteen (15) days after submission, the statement shall be considered approved. Once approved by the ~~Public Utility~~Consumer Services Division, the statement need not be resubmitted to the ~~Public Utility~~Consumer Services Division for further approval, unless and until this Chapter is changed by the Commission to require additional data. The statement shall at least describe or include:

(A) Billing procedures.

(B) Customer payment requirements and procedures.

(C) Deposit and guarantee requirements.

(D) Conditions of termination, discontinuance, and reconnection of service.

(E) Procedures for handling inquiries.

(F) A procedure whereby an end-user may avoid discontinuance of service during a period of absence.

(G) The telephone number and address of all offices of the Commission's Consumer Services Division.

(H) The statement that the telecommunications service provider is regulated by the Commission.

(I) Notification that the end-user may request an adjustment if service is interrupted for periods in excess of twenty-four (24) hours.

(3) Additional information. The directory shall contain additional information concerning a telecommunications service provider, as requested by a telecommunications service provider, to the same extent that the directory provider includes similar information for itself or its affiliates offering local exchange service within the geographic area covered by the directory based on rates, terms and conditions that are just, reasonable and nondiscriminatory.

(~~f~~e) **Liability for errors.** The liability of the telecommunications service provider for an error or omission in its telephone directory, or for an error or omission on intercept service, shall not exceed the amount of actual damage suffered, and in no event shall its liability exceed an amount equal to local exchange service charged to the end-user for the listed service for the period during which the directory containing the error or omission is the last published directory of the exchange.

(~~g~~f) **Access to publishing information.** Upon request, a telecommunications service provider shall provide directory listings gathered in its capacity as a provider of local exchange service on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, and to any person upon request for the purpose of publishing directories.

165:55-7-4. Availability of rules and tariffs

A telecommunications service provider shall maintain and make available for public inspection a copy of this Chapter and a printed copy of its tariffs. Conspicuous signs shall be posted at its office(s) in the State of Oklahoma indicating that this tariff information is available for public inspection. Further, information will be maintained and made available to the public upon request indicating the websites at which the TSP's posted Terms of Service are available. Any telecommunications service provider that does not maintain an office in the

State of Oklahoma shall, upon request by an end-user, provide a copy of this Chapter, or any relevant portion thereof, and the requested printed tariff(s) to such end-user, free of charge.

SUBCHAPTER 9. CUSTOMER BILLING AND DEPOSITS

PART 1. BILLING AND PAYMENT REQUIREMENTS

165:55-9-2.1. Bills rendered by a billing agent

(a) A telecommunications service provider or an IXC shall not act as a billing agent for an IXC, reseller or another telecommunications service provider, unless the telecommunications service provider or IXC fully discloses on the bill the toll-free number of the certificated entity for whom the bill is being rendered or, if the billing agent has been given authority to make adjustments to the customer's bill, its toll-free number.

(b) A telecommunications service provider or IXC shall not utilize the services of a billing agent unless the telecommunications service provider or IXC requires that the billing agent follow the procedures set forth in ~~OAC 165:55-9-1 through OAC 165:55-9-6 and OAC 165:55-9-10 through OAC 165:55-9-14~~in this Subchapter.

165:55-9-5. Billing disputes

(a) In the event of a dispute between an end-user and a telecommunications service provider, the telecommunications service provider shall make such investigation as is required by the particular case, and report the results thereof to the end-user.

(b) In the event the dispute is not resolved, the telecommunications service provider shall inform the end-user that the end-user may utilize the complaint procedures of Commission's Consumer Services Division. The information to be provided to consumers shall be:

(1) The street address of the Consumer Services Division, which is Oklahoma Corporation Commission, Consumer Services Division, 2101 N. Lincoln Blvd. Suite ~~460~~ 580W, Oklahoma City, OK 73105.

(2) The mailing address of the Consumer Services Division, which is P. O. Box 52000, Oklahoma City, OK 73152-2000.

(3) The telephone numbers of the Consumer Services Division, which are (405) 521-2331 and (800) 522-8154.

(4) The hours of operation of the Consumer Services Division, which are 8:00 a.m. to 4:30 p.m. Monday through Friday.

(c) When a complaint has been made with the Commission's Consumer Services Division, the telecommunications service provider shall be required to forego disconnect procedures on account of nonpayment of any portion of accumulated disputed charges pending investigation by the Commission's Consumer Services Division. The end-user shall be required to pay the undisputed part of the bill, and if not paid, the telecommunications service provider may discontinue service.

SUBCHAPTER 11. SERVICE DENIAL, SUSPENSION AND DISCONNECTION

PART 3. SUSPENSION AND DISCONNECTION PROCEDURES

165:55-11-12.1. Emergency service following suspension

Regardless of the reason for suspension of service, if the end-user is served by a central office capable of providing emergency service following suspension, the telecommunications service provider shall also provide access to 911 or E911 service, where available, for a period of at least ~~30~~ thirty (30) days.

SUBCHAPTER 13. OPERATING AND MAINTENANCE REQUIREMENTS

PART 3. SERVICE STANDARDS

165:55-13-10.1. Calling areas

(a) Wide Area Calling Plans ("WACPs") and Extended Area Service ("EAS") arrangements established as of the effective date of this Section, and any modifications thereafter approved by the Commission, shall be the standard level of service provided by all incumbent LECs providing service within said WACPs and EAS arrangements, unless the end-user elects otherwise pursuant to subsection (b) of this Section.

(b) An incumbent LEC may offer a calling scope which is different than an established WACP or EAS arrangement as an optional service, after notice and hearing, provided however, that end-users shall be deemed to have elected to receive the entire EAS or WACP area until such time as the end-user makes an affirmative election of a different calling scope.

(c) ~~Any competitive LEC may elect to offer service to a calling area which includes all or a portion of a WACP or EAS arrangement, after notice and hearing.~~

~~(d)~~ In the event the competitive LEC provides an optional toll service that is consistent with an EAS or WACP calling scope, the competitive LEC shall be required to pay any contribution associated with minutes of use as established by the Commission in Order No. 399040, issued in Cause Nos. PUD 950000117 and PUD 950000119.

165:55-13-12.1. New Developments

A TSP may require a developer desiring an extension to a prospective real estate subdivision to post a surety bond or make a cash deposit or bank letter of credit (at the option of the developer) equal to the estimated total costs of the extension before the construction of the extension is commenced. Total cost of construction shall not include drops to individual users off the telephone distribution facilities. ~~In the event the developer chooses to post a surety bond or bank letter of credit, there shall be added to the principal amount of the surety bond or bank letter of credit, an amount equal to~~

~~the most recent average embedded debt cost of the TSP on file with the Commission.~~ At least annually, for a period of five (5) years, the TSP shall give the developer a credit equal to the percentage which the number of installations made in said twelve (12) months period bears to seventy-five percent (75%) of the total number of installations contemplated by the developer and the TSP for the completed subdivision. The credit referred to in this Chapter, in the case of deposit, shall be returned to the developer annually; with respect to a surety bond posted by the developer, the credit shall be in the form of an annual reduction of the face amount of the surety bond posted. Upon the developer receiving the applicable credit for each installation as set forth in this Chapter, the TSP shall release or cause to be released the obligation of the developer and the surety, if a surety bond was posted; provided, however, if within five (5) years from the date of the surety bond or cash deposit, the proposed development area has not been developed in a sufficient amount for the developer to receive credit for the total cost of extension to the development as agreed upon, then the developer shall be obligated to pay the TSP the total construction costs reduced by all credits previously allowed. In the event that said amount is not paid within sixty (60) days of the date due and a surety bond has been posted, the TSP may declare a default and shall have the right to call upon the surety for payment of the remaining unpaid amount due. In the event of dispute over the circumstances requiring the posting of a surety bond or cash deposit, and/or the reasonableness of the face amount of such bond or cash deposit, a TSP or the developer may apply to the Commission for an appropriate order resolving the dispute.

165:55-13-14. Lifeline program [REVOKED]

~~(a) Each telecommunications service provider who has been designated as an ETC, shall file tariffs with the Commission implementing a program for which qualifying low-income end-users pay reduced charges as a result of the Lifeline support amount described in (e) below.~~

~~(b) The telecommunications service provider, who has been designated as an ETC, shall offer toll restriction to all qualifying low-income end-users at the time such end-user subscribes to Lifeline service. If the end-user elects to receive toll restriction, that service shall become part of that end-user's Lifeline service. Eligible telecommunications service providers may not collect a deposit in order to initiate Lifeline service, if the qualifying low-income end-user voluntarily elects toll restriction, where available, from the telecommunications service provider. If toll restriction is unavailable, or if it is available and the qualifying low-income end-user does not elect toll restriction, the telecommunications service provider may charge a deposit as detailed in OAC 165:55-9-14.~~

~~(c) Each telecommunications service provider, who has been designated as an ETC, shall publicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service.~~

~~(d) Qualifying end-users must meet the eligibility criteria set out in OAC 165:59-9-3.~~

~~(e) For a qualifying low-income end-user who is not an eligible resident of Tribal lands, the Lifeline support amount shall not exceed $3.50 plus the tariffed rate in effect for the primary residential federal End User Common Line (EUCL) of the ILEC serving the area in which the qualifying low-income end-user receives service. For an eligible low-income end-user who lives on or near a reservation, the Lifeline support amount shall not exceed $28.50 plus that same federal EUCL, exceed the total amount of the EUCL plus the residential local exchange rate minus $1.00~~

~~(f) The telecommunications service provider, who has been designated as an ETC, shall instruct applicants to the Lifeline program to indicate, at the time of application, in writing, all qualifying programs under which the applicant is eligible for or receives assistance or benefits.~~

PART 5. SERVICE QUALITY STANDARDS

165:55-13-26. Customer access to provider [REVOKED]

~~Any telecommunications service provider and IXC that utilizes a mechanized answering system for answering of any customer calls regarding billing or repair during regular business hours must provide access to a live customer representative during the recitation of the mechanized options. If a customer is utilizing a rotary dial phone, they should be transferred to live customer representative during the recitation of the mechanized options.~~

PART 7. TRANSMISSION OBJECTIVES

165:55-13-30. Accepted transmission design factors [REVOKED]

~~All voice grade interoffice trunk facilities shall conform to accepted transmission design.~~

SUBCHAPTER 15. NOTIFICATION OF TRANSACTIONS AFFECTING CUSTOMERS OR BUSINESS OPERATIONS

165:55-15-1. Notification of certain transactions affecting the customers or operations of a telecommunications service provider or IXC

(a) The parties to an agreement, the performance of which will result in the movement of some or all of the regulated telecommunications services customers of one or more certificated telecommunications services providers or IXCs to a different legal entity, shall, at least forty-five (45) days before the effective date of such proposed transaction, file an original and ~~eight (8)~~five (5) copies of a Notification of Transaction with the Commission's Office of the Court Clerk, accompanied by the applicable filing fee, in order to notify the Commission of the transaction.

(b) The parties to an agreement, the performance of which will result in the transfer of a Certificate of Convenience and

Necessity, with or without the transfer of a tariff, from one legal entity to another legal entity shall, at least forty-five (45) days before the effective date of such proposed transaction, file an original and ~~eight (8)~~five (5) copies of a Notification of Transaction with the Commission's Office of the Court Clerk, accompanied by the applicable filing fee, in order to notify the Commission of the transaction.

(c) The parties to an agreement, the performance of which will result in the merger of one or more legal entities with a surviving legal entity which is certificated to provide local and/or interexchange telecommunications services, shall, at least forty-five (45) days before the effective date of such proposed transaction, file an original and ~~eight (8)~~five (5) copies of a Notification of Transaction with the Commission's Office of the Court Clerk, accompanied by the applicable filing fee, in order to notify the Commission of the transaction.

(d) This Section shall not require notification to the Commission of transactions which involve only changes in the ownership of the stock of a telecommunication service provider or IXC. Such transactions are not subject to regulation by the Commission.

(e) The Notification of Transaction shall include a copy of the agreement, with all exhibits and schedules, and set forth the following information, if applicable:

(1) The name of the acquiring entity and the acquired entity.

(2) Identification of the acquired assets.

(3) The anticipated completion date and the effective date (if different) of the transaction.

(4) The name of the entity(ies) which will be providing telecommunications services in Oklahoma subsequent to the effective date of the transaction (the "surviving entity").

(5) The name, address and telephone number of a contact person for purposes of the Notification of Transaction.

(6) The names and qualifications of the individuals who will serve as officers and management of the surviving entity.

(7) The name(s), address(es) and telephone number(s) of the representatives of the surviving entity who will be the contact(s) for the Public Utility Division and the Consumer Services Division and will be primarily responsible for:

(A) Providing customer service;

(B) Repair and maintenance;

(C) Answering complaints;

(D) Authorizing and/or furnishing refunds to customers

(E) Tariff issues; and,

(F) Receiving Notices related to causes docketed at the Commission.

(8) An affidavit, including a financial statement, that states that the surviving entity possesses the financial ability to provide telecommunications services in the State of Oklahoma.

(9) A copy of the notice which will be provided to affected customers informing them of the transaction and any change in the name of the entity which provides telecommunications services to them or in their rates, charges or terms and conditions of service as a result of the transaction.

(10) Identification of any changes in services to be offered or tariffed rates to affected customers required by the transaction.

(11) A narrative and/or schematic description of the relationship between or among the acquired and acquiring entities and the surviving entity.

(12) An acknowledgment that any tariff revisions shall only be accomplished in a separate filing.

(13) A statement of the approximate number of Oklahoma customers.

(14) In addition, this Section shall not apply to transactions between affiliates that have an Oklahoma Certificate of Convenience and Necessity. If the transaction is going to modify the company name on the customer's bill, ~~45~~forty-five (45) days advance notice must be provided to affected customers.

(f) At the time of filing the Notification of Transaction, the acquiring entity shall provide a copy of the Notification of Transaction, with all attachments thereto, to the Office of the Attorney General of the State of Oklahoma.

(g) The Commission Staff shall review the Notification of Transaction for the purpose of determining whether the proposed transaction should be approved and, in the case of mergers, whether the surviving entity should be allowed to provide telecommunications service in Oklahoma after the effective date of the transaction under the authority of any existing Certificate of Convenience and Necessity. The Commission shall act on a notification within thirty (30) business days of the date the notification is filed. No reportable transaction shall be consummated except by order of the Commission. Any person wishing to object to the proposed filing must file an objection with the Commission's Office of the Court Clerk no later than fifteen (15) days after the proposed filing. The Attorney General of the State of Oklahoma shall be granted intervention in such proceeding, if requested.

(h) Within thirty (30) business days of the filing of the Notification of Transaction, the Commission Staff may file a Continuance of Review in the Cause stating that the Commission Staff has not completed its review of the transaction and shall require an additional specified time, not to exceed an additional thirty (30) calendar days, in which to complete such review. The Commission Staff shall accompany such a Continuance of Review with a specification of the additional information, if any, needed to complete this review.

(i) The Commission Staff may, if it determines appropriate, file a Notice in the Cause requiring the acquiring entity and/or the surviving entity to show cause that the proposed transaction and/or merger is lawful, fair to the customers and in the public interest. The filing of such Notice by the Commission Staff will not alone suspend the authority of any entity to operate under an existing Certificate of Convenience and Necessity. Simultaneously with the filing of any such Notice, the Commission Staff shall propose a procedural schedule, including a date for hearing which shall be held within ninety (90) calendar days of the date of the filing of the Notification of Transaction,

unless otherwise ordered by the Commission. If such a Notice is filed by the Commission Staff, the acquiring entity and/or surviving entity shall have the burden of establishing that the proposed transaction(s) is lawful, fair to the customers and in the public interest.

(j) After approval of notification of transaction(s), and not later than thirty (30) days after transaction consummation, an original and two (2) copies of the approved tariffs, if necessary, which conform to OAC 165:55-5-20, shall be provided to the Public Utility Division.

165:55-15-5. Cessation of business in Oklahoma

(a) At least thirty (30) days before the effective date of the cessation of the provisioning of telecommunications service(s) in the State of Oklahoma, a telecommunications service provider or IXC shall file an original and ~~eight (8)~~five (5) copies of an application for withdrawal of its Certificate of Convenience and Necessity and cancellation of its tariffs and provide Notice of such filing to the Attorney General of the State of Oklahoma.

(b) An application for withdrawal shall include as attachments the following information, which must be certified as true and correct by an officer of any corporate applicant, or an authorized representative of an unincorporated applicant:

(1) The contact person who will be responsible for concluding all outstanding business with the Commission and customers;

(2) A statement regarding the amount of any outstanding customer deposits and the date refund checks will be sent to customers; and,

(3) The date of withdrawal.

(c) Notice of discontinuance shall be provided at least thirty (30) days prior to the date that service will cease by regular mail to all of the customers of the telecommunications service provider or IXC. The form and method of notice shall be approved by the Director of the Public Utility Division, and shall give the exact date that service will cease and contain information as to the procedure for any refunds due customers.

(d) Notice of discontinuance will be sent at least thirty (30) days prior to the date service will cease, by certified mail, to any E911/911 Database Management Service Provider within the exchanges served by the applicant. Notice shall include:

(1) The exact date the applicant will cease to do business in Oklahoma.

(2) A statement that until the date applicant ceases to do business in Oklahoma, the applicant will continue to submit transactions to the E911/911 Database Management Service Provider for transferring and keeping up-to-date customer's information.

(3) A statement that the applicant will unlock or release all E911/911 records effective with its termination date, thereby enabling the migration of existing E911/911 records with a telephone number ported by the customer to a different telecommunications service provider.

(e) Unless provided otherwise in this Chapter, no application for withdrawal and/or cancellation of an existing Certificate of Convenience and Necessity and tariff shall be granted except by Order of the Commission, after such notice and hearing, if any, as directed by the Commission.

(f) The Commission Staff may file an application to cancel an existing Certificate of Convenience and Necessity and tariff, at the company's request and at the option of the Commission Staff. The request may be in the form of a letter to the Director of the Public Utility Division. The letter will conform ~~with~~to OAC 165:55-15-5 (b) and (c).

165:55-15-5.1. Withdrawal of competitive services

(a) Upon at least thirty (30) days advance notice to the Director of the Public Utility Division, an ILEC serving more than 75,000 customers on January 1, 2015 may withdraw any service that has been deemed competitive by the Commission as of January 1, 2014.

(b) Notice of discontinuance shall be sent at least thirty (30 days prior to the date that service will cease by regular mail to all of the affected customers of the telecommunications service provider. The notice shall be in a form approved by the Director of the Public Utility Division, and shall give the exact date that service will cease and contain information as to the procedure for any refunds due customers.

SUBCHAPTER 17. FACILITATION OF LOCAL EXCHANGE COMPETITION

165:55-17-1. Rules governing local exchange competition

The provisioning of local exchange service by any telecommunications service provider subject to the jurisdiction of the Oklahoma Corporation Commission, shall be subject to all requirements of 47 U.S.C. §251 *et seq.* and OAC 165:55.

165:55-17-3. Designation of service territory

(a) The Commission shall determine whether a ~~competitive LEC's~~telecommunications service provider's service territory is in the public interest at the time the competitive LEC seeks certification or proposes changes to its service territory. In determining whether the proposed service territory meets the public interest, the Commission shall consider factors, including but not limited to, the existence and location of the competitive LEC's facilities, the number of potential customers to be served and the potential impact on universal service.

(b) No service territory shall be changed except by Order of the Commission after such notice and hearing, if any, as directed by the Commission. Applications for change to an existing service territory shall be accompanied by revised tariff pages reflecting the proposed new service territory.

165:55-17-5. Obligations of telecommunications service providers to facilitate competition

(a) **General duty of telecommunications service providers.** Each telecommunications service provider has the duty:

(1) To interconnect directly with or indirectly with the facilities and equipment of other telecommunications service providers; and,

(2) Not to install network features, functions, or capabilities that do not comply with established guidelines and standards.

(b) **Obligations of all telecommunications service providers.** Each telecommunications service provider furnishing local exchange services has the following duties:

(1) **Resale.** The duty not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of its telecommunications services.

(2) **Number portability.** The duty to provide, to the extent technically feasible, number portability in accordance with requirements established by the FCC.

(3) **Dialing parity.** The duty to provide dialing parity to competing providers of local exchange and long distance telecommunications services, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance and directory listings, with no unreasonable dialing delays.

(4) **Access to rights of way.** The duty to afford access to the poles, ducts, conduits, and rights-of-way of such telecommunication service provider to competing providers of telecommunications services on rates, terms and conditions that are consistent with existing laws, regulations and contract rights.

(5) **Reciprocal compensation.** The duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications services.

(c) **Additional obligations of incumbent LECs.** In addition to the obligations described in OAC 165:55-17-5(b), each incumbent LEC and any competitive LEC that is treated as an incumbent LEC pursuant to 47 U.S.C. § 251(h), has the following duties:

(1) **Negotiations.** The duty to negotiate in good faith the particular terms and conditions of agreements to fulfill the duties described in this Section. The requesting telecommunications service provider also has the duty to negotiate in good faith the terms and conditions of such agreements.

(2) **Interconnection.** The duty to provide, for the facilities and equipment of any requesting telecommunications service provider, interconnection with the incumbent LEC's network as follows:

(A) For the transmission and routing of telephone exchange service and access service;

(B) At any technically feasible point within the incumbent LEC's network;

(C) That is at least equal in quality to that provided by the incumbent LEC to itself or to any subsidiary, affiliate, or any other party to which the incumbent LEC provides interconnection; and,

(D) On rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and requirements of this Section.

(3) **Unbundled access.** The duty to provide, to any requesting telecommunications service provider for the provision of telecommunications services, nondiscriminatory access to network elements required by OAC 165:55-17-11 on an unbundled basis and at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and requirements of this Chapter. An incumbent LEC shall provide such unbundled network elements in a manner that allows requesting telecommunications service providers to combine such elements in order to provide such telecommunications services.

(4) **Resale.** The duty to provide resale as follows:

(A) To offer for resale at wholesale rates any telecommunications service that the incumbent LEC provides at retail to subscribers who are not telecommunications service providers; and,

(B) Not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications services, except that telecommunications service providers may resell local exchange service only to the same class of customers to which the incumbent LEC sells such services.

(5) **Notice of changes.** The duty to provide reasonable public notice of changes in the information necessary for the transmission and routing of services using the incumbent LEC's facilities or networks, as well as of any other changes that would affect the interoperability of such facilities and networks.

(6) **Collocation.** The duty to provide, on rates, terms and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the incumbent LEC, except that the incumbent LEC may provide for virtual collocation if the incumbent LEC demonstrates that physical collocation is not practical for technical reasons or because of actual space limitations.

(d) **Exemptions for rural telephone companies.** OAC 165:55-17-5(c) shall not apply to a rural telephone company until:

(1) Such company has received a bona fide request for interconnection, services, or network elements, and.

(2) The Commission determines that such request is not unduly burdensome, is technically feasible, and is consistent with established universal service principles.

(A) **Termination of exemption.** In order to terminate the exemption of a rural telephone company, the following must occur:

(i) The telecommunications service provider making a bona fide request of a rural telephone company for interconnection, services, or network elements shall submit a notice of its request to the Commission.

(ii) The Commission shall conduct an inquiry for the purpose of determining whether to terminate the exemption under this subsection.

(B) **Limitation on exemption.** The exemption provided by this subsection shall not apply to a request under OAC 165:55-17-5(c) from a cable operator providing video programming, and seeking to provide any telecommunications service, in the area in which the rural telephone company begins providing video programming after February 8, 1996.

(e) **Suspensions and modifications for rural telephone companies.** An incumbent LEC with fewer than two percent (2%) of the end-user lines installed in the aggregate within the United States may apply to the Commission for suspension or modification of any requirement of OAC 165:55-17-5(b) or OAC 165:55-17-5(c) applicable to network facilities specified in such application. The Commission will grant such application to the extent that, and for such duration as, the Commission determines that such suspension or modification:

(1) Is necessary to:

(A) Avoid a significant adverse economic impact on users of telecommunications services generally;

(B) Avoid imposing a requirement that is unduly economically burdensome; or,

(C) Avoid imposing a requirement that is technically infeasible; and,

(2) Is consistent with the public interest, convenience and necessity.

(f) **Time for Commission review.** The Commission will issue an Order regarding any application:

(1) For termination of an exemption, pursuant to OAC 165:55-17-5(d), within one hundred twenty (120) days after the Commission receives notice of the request:

(A) The Commission shall terminate the exemption if the request is:

(i) Not unduly economically burdensome;

(ii) Is technically feasible; and,

(iii) Is consistent with established universal service principles.

(B) Upon termination of the exemption, the Commission will establish an implementation schedule for compliance with the request.

(2) For a suspension or modification of OAC 165:55-17-5(b) or OAC 165:55-17-5(c), within one hundred eighty (180) days after receiving such application.

(g) **Failure to act on a bona fide request.** Any telecommunications service provider that makes a bona fide request for services or network elements to another telecommunications service provider, but fails to begin the necessary steps to introduce competition in the requested exchange(s) or zone(s) within twelve (12) months after ~~satisfactoryunbundling~~satisfactory unbundling and/or interconnection agreements have been approved by the Commission, shall be liable for the reasonable expenses incurred by the requested telecommunications service provider.

(h) Each TSP shall have the duty to comply with 47 U.S.C. §251 and §252 and 17 O.S. §139.101 *et seq.*

165:55-17-7. Procedures for negotiation, arbitration and approval of agreements

(a) **Agreements arrived at through voluntary negotiations.** Upon receiving a request for interconnection, services, or network elements pursuant to OAC 165:55-17-5, an incumbent LEC may negotiate and enter into a binding agreement with the requesting telecommunications service provider or providers without regard to the standards set forth in OAC 165:55-17-5 (b) and (c). The agreement shall include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement. The agreement, including any interconnection agreement negotiated before the date of enactment of the Telecommunications Act of 1996 (February 8, 1996), shall be filed with the Commission under subsection (e) of this Section.

(b) **Mediation.** Any party negotiating an agreement under this Section may, at any point in the negotiations, ask the Commission to participate in the negotiations and mediate any differences arising in the course of the negotiations. The Public Utility Division shall provide the mediator, unless otherwise directed by the Commission.

(c) **Agreements arrived at through compulsory arbitration.** During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent LEC receives a request for negotiation under this Section, the incumbent LEC or any other party to the negotiation may seek arbitration at the Commission of any open issues. Nothing in this subsection shall preclude negotiating parties from filing a joint application.

(1) **Responsibilities of the applicant with regard to the Commission.** A party that seeks arbitration from the Commission pursuant to this subsection shall, contemporaneously with the filing of its application, provide the Commission all relevant documentation concerning:

(A) The unresolved issues and the position of each of the parties with respect to those issues; and,

(B) Any other issue discussed and resolved by the parties.

(2) **Responsibility of the applicant with regard to other parties.** A party that seeks arbitration from the Commission pursuant to this subsection shall, provide a copy of the application and any documentation to the other party or parties not later than the day on which the application is filed.

(3) **Opportunity to respond.** A nonpetitioning party to a negotiation under this Section may respond to the other party's petition and provide such additional information as it wishes within twenty-five (25) days after the Commission receives the petition.

(4) **Action by the Commission.** When an application for arbitration is filed, the Commission will utilize the following procedures.

(A) The Commission will limit its consideration of any petition under this subsection, and any response thereto, to the issues set forth in the petition and in the response, if any, filed under paragraph (3) of this subsection.

(B) The Commission may require the petitioning party and the responding party to provide such information as may be necessary for the Commission to reach a decision on the unresolved issues. If any party refuses or unreasonably fails to respond on a timely basis to any request from the Commission, then the Commission may proceed on the basis of the best information available to it, from whatever source derived.

(C) The Commission will resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions as required to implement subsection (d) of this Section upon the parties to the agreement, and shall conclude the resolution of any unresolved issues not later than nine (9) months after the date on which the telecommunications service provider received the request under this Section.

(5) **Refusal to negotiate.** The refusal of any other party to the negotiation to participate further in the negotiations, to cooperate with the Commission in carrying out its function as an arbitrator, or to continue to negotiate in good faith in the presence, or with the assistance, of the Commission shall be considered a failure to negotiate in good faith.

(d) **Standards for Arbitration.** In resolving by arbitration, under subsection (c) of this Section, any open issues and imposing conditions upon the parties to the agreement, the Commission will:

(1) Ensure that such resolution and conditions meet the requirements of OAC 165:55-17-5 and applicable FCC requirements;

(2) Establish rates for interconnection, services, or network elements consistent with OAC 165:55-17-27; and,

(3) Provide a schedule for implementation of the terms and conditions by the parties to the agreement.

(e) **Approval by the Commission and grounds for rejection.** Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval by filing an application with the Commission's Office of the Court Clerk. After review of the application, the Commission will approve or reject the agreement, with written findings as to any deficiencies. The Commission will only reject an agreement, or any portion thereof, if it finds that:

(1) The agreement, adopted by negotiation under subsection (a) of this Section, either:

(A) Discriminates against a telecommunications service provider that is not a party to the agreement; or,

(B) The implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity.

(2) The agreement adopted by compulsory arbitration under this Section does not meet the requirements of OAC 165:55-17-5 or the agreement does not meet the standards in OAC 165:55-17-27.

(3) **Notice requirements.** Applicants seeking approval of an Interconnection Agreement shall provide Notice of the Application to be given by mail, electronic mail or personal service to the Attorney General of the State of Oklahoma.

(f) **Reservation of authority.** Notwithstanding subsection (e), the Commission, consistent with the requirements of 47 § 253, shall enforce other requirements of State law in its review of an agreement, including requiring compliance with Subchapter 13 of this Chapter.

(g) **Statement of generally available terms.** In conformance with 47 U.S.C. § 252(f), SWBT may prepare and file with the Commission a statement of the terms and conditions that SWBT generally offers within Oklahoma to comply with the requirements of 47 U.S.C. § 251, and the regulations thereunder and the standards applicable under this Section. In the event SWBT files such a statement, the Commission will:

(1) Approve the statement provided the statement complies with Subchapter 13 of this Chapter, OAC 165:55-17-5 and OAC 165:55-17-27 and is consistent with 47 U.S.C. § 253;

(2) Complete the Commission's review of SWBT's statement not later than 60 days after the date of such submission, (including any reconsideration thereof), unless SWBT agrees to an extension of the period for such review; or permit such statement to take effect.

(h) **Continued review of SWBT's statement of generally available terms.** In the event the Commission has permitted the statement of SWBT to take effect pursuant to paragraph (2) of subsection (g), the Commission may continue to review said statement after it is effective and the Commission may approve or disapprove said statement if it does not meet the requirements of paragraph (1) of subsection (g).

(i) **Duty to negotiate not affected.** The submission or approval of a statement under subsection (g) shall not relieve SWBT of its duty to negotiate the terms and conditions of an agreement pursuant to OAC 165:55-17-5.

(j) **Consolidation of proceedings.** Where not inconsistent with the requirements of the Federal Telecommunications Act of 1996, the Commission may, to the extent practical, consolidate proceedings under OAC 165:55-17-5 and OAC 165:55-17-7, in order to reduce administrative burdens on telecommunications service providers, other parties to the proceedings, and the Commission in carrying out its responsibilities under the Telecommunications Act of 1996.

(k) **Availability for public inspection.** The Commission will make a copy of each agreement approved under subsection (e) and each statement approved under subsection (g) available for public inspection and copying within 10 days after the agreement or statement is approved. The Commission will charge the fees set forth in OAC 165:5-3-1 to cover the costs of processing an application and copying.

(l) **Availability to other telecommunications service providers.** A telecommunications service provider shall make available any interconnection, service, or network element provided under an agreement approved under this Section to which it is a party, to any other requesting telecommunications service provider; upon the same terms and conditions as those provided in the agreement.

(m) Each TSP shall have the duty to comply with 47 U.S.C. §252 and 17 O.S. §139.101 *et seq.*

165:55-17-11. Unbundling of incumbent LEC networks

(a) Upon receipt of a bona fide request, each incumbent LEC shall enter into good faith negotiations to unbundle its network elements to the exchange(s) and/or zone(s) specifically requested in the bona fide requests. Said unbundling shall be available at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.

(b) Subsection (a) of this Section shall not be applicable to a rural telephone company until such time as the Commission has determined that the bona fide request is not unduly economically burdensome, is technically feasible and is consistent with universal service.

(c) Unbundling issues not addressed or resolved by these rules, shall be addressed and resolved through the negotiation and arbitration process ~~provided for in OAC 165:55-17-5 and OAC 165:55-17-7,~~ in a manner consistent with the Federal Telecommunications Act of 1996 and FCC regulations prescribed thereto.

165:55-17-13. Interconnection of networks

(a) Local exchange telecommunications networks shall be interconnected, where technically feasible, so that end-users of any telecommunications service provider can seamlessly send and/or receive calls without any diminution in service quality regardless of the telecommunications service provider selected by the end-user or the called party. Such interconnection shall be made available, when requested by a competing telecommunications service provider, on an unbundled basis equally and on a nondiscriminatory basis.

(b) A telecommunications service provider shall make available any interconnection, service, or network element, provided under an agreement to which it is a party and which has been approved by the Commission pursuant to OAC 165:55-17-7, to any other requesting telecommunications service provider upon the same terms and conditions as those provided in the agreement.

(c) Interconnection issues not addressed or resolved by these rules, shall be addressed and resolved through the negotiation and arbitration process provided for in ~~OAC 165:55-17-5 and OAC 165:55-17-7,~~ a manner consistent with the Federal Telecommunications Act of 1996 and FCC regulations prescribed thereto.

(d) When filing an amendment to an interconnection agreement, the effective date, order number and cause number of the original interconnection agreement or the subsequent amendment that is being modified must be included.

(e) When filing an application for approval of an agreement or an amendment to an existing interconnection agreement, a processed copy will be provided to the Court Clerk, the Director of the Public Utility Division and any other party to the agreement. The copy to the Director of the Public Utility Division may be contained on compact disk ~~or 3.5 inch diskette~~, formatted in an IBM compatible form using Microsoft Word for Windows, ~~Word Perfect,~~ or compatible software.

165:55-17-17. Number portability and dialing parity

(a) **In General.** All telecommunications service providers ~~subject to OAC 165:55-17-5(b)(2)~~ have the duty to provide~~, to the extent technically feasible,~~ number portability in accordance with requirements prescribed by the FCC. ~~Until the date the FCC issues its regulations to require number portability, number portability will be provided through remote call forwarding, direct inward dialing trunks, or other comparable arrangements, with as little impairment of functioning, quality, reliability, and convenience as possible. In addition, all telecommunications service providers shall provide dialing parity to enable an end-user to have the ability to route automatically, without the use of any access code, their traffic to the telecommunications service provider of the end-user's designation, regardless of which telecommunications service provider originates or terminates the traffic.~~

(b) **Additional State Requirements.** To the extent a telecommunications service provider allows an end-user to retain the same telephone number when changing service locations within a wire center, said telecommunications service provider must allow an end-user to retain the same telephone number when changing service locations and telecommunications service providers within a wire center.

~~(c) **Public Numbering Resources.** Until the date by which telecommunications numbering administration guidelines are established by the FCC, the incumbent LECs shall provide nondiscriminatory access to telephone numbers for assignment to the other telecommunications service provider's end-users. After that date, compliance with such FCC guidelines, plan or rules is required.~~

~~(d) **Cost recovery.** sThe costs of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications service providers on a competitively neutral basis consistent with FCC rules and regulations.~~

165:55-17-25. Costing standards

(a) To facilitate the Commission's ability to arbitrate agreements between telecommunications service providers when negotiations have resulted in a party requesting the Commission to arbitrate, the telecommunications service provider owning facilities that are the subject of arbitration shall provide to the Commission the following cost studies, for those services in dispute, no later than one hundred sixty (160) days after the receipt of a request for negotiation:

(1) Long-run incremental cost ("LRIC") studies and studies identifying a contribution to common costs for interconnection of facilities and network elements; or,

(2) Marketing, billing, collection and other costs that will be avoided by the telecommunications service provider for any resold services.

(b) To facilitate the Commission's ability to review and approve negotiated agreements between telecommunications service providers, both parties shall provide to the Commission Staff, within ten (10) days following the request, any information, including LRIC studies, necessary to demonstrate that the negotiated agreement does not discriminate against a

telecommunications service provider which is not a party to the agreement.

(c) Nothing in this Section precludes a party from requesting production of cost studies during the negotiation process provided for ~~in OAC 165:55-17-7~~under federal law, nor precludes a party from objecting to such request. Disputes related to such requests or objections may be submitted by either party to the Commission for mediation pursuant to ~~OAC 165:55-17-7(b)~~OAC 165:55-17-7.

165:55-17-29. Eligible Telecommunications Carrier [REVOKED]

~~Each incumbent LEC is designated as an eligible telecommunications carrier for the territory for which it was certified on the date of the adoption of the Federal Telecommunications Act of 1996. For the purpose of eligibility to receive federal universal service support under 47 U.S.C. § 214(e), an eligible telecommunications service provider shall, throughout its service territory:~~

~~(1) Offer the telecommunications services that are supported by Federal universal service support mechanisms under 47 U.S.C. § 254(c), either using its own facilities or a combination of its own facilities and resale of another telecommunications service provider's services, including the services offered by another eligible telecommunications service provider; and,~~

~~(2) Advertise the availability of such telecommunications services and the charges therefor using media of general distribution.~~

165:55-17-33. Verification of compliance prior to providing certain In-Region InterLATA services [REVOKED]

~~After SWBT has made application to the FCC for authorization to provide interLATA services originating in any in-region State, the Commission shall verify compliance pursuant to 47 U.S.C. § 271(d)(2)(B) with the requirements contained in 47 U.S.C. § 271(c), once SWBT has met the requirements set forth in this Section.~~

~~(1) **Agreement or statement.** SWBT meets the requirements for providing certain in-region interLATA services if it has complied with either subparagraph (A) or subparagraph (B) of this paragraph with regard to its telecommunications system in Oklahoma.~~

~~(A) **Presence of a facilities-based competitor.** SWBT complies with the requirements of this subparagraph if it has entered into one or more binding agreements that have been approved under 47 U.S.C. § 252 specifying the terms and conditions under which SWBT is providing access and interconnection to its network facilities, for the network facilities of one or more unaffiliated telecommunications service providers providing service to residential and business end users. For the purpose of this subparagraph, such service may be offered by a telecommunications service provider either exclusively over their own telecommunications facilities or predominantly over their own telecommunications facilities in combination with the resale of the telecommunications services of another telecommunications service provider.~~

~~(B) **Failure to request access.** SWBT meets the requirements of this subparagraph if, ten (10) months or more after the date of enactment of the Federal Telecommunications Act of 1996 and three (3) months before the date that SWBT makes its application to the FCC under 47 U.S.C. § 271(d)(1), no unaffiliated telecommunications service provider providing services to residential and business end users has requested the access and interconnection described in OAC 165:55-17-11(b); provided a statement of the terms and conditions that SWBT generally offers to provide such access and interconnection has been approved or permitted to take effect by the Commission. For purposes of this subparagraph, SWBT shall be considered not to have received any request for access and interconnection if the Commission certifies that the only telecommunications service provider, or providers, making such a request have:~~

~~(i) Failed to negotiate in good faith as required by 47 U.S.C. § 252, or~~

~~(ii) Violated the terms of an agreement approved under 47 U.S.C. § 252 of said Act by the provider's failure to comply, within a reasonable period of time, with the implementation schedule contained in such agreement.~~

~~(2) **Specific interconnection requirements.** Within Oklahoma, SWBT meets the requirements concerning specific interconnection requirements pursuant to 47 U.S.C. § 271(c)(2), if:~~

~~(A) SWBT is providing access and interconnection pursuant to one or more agreements described in paragraph (1)(A) of this Section; or,~~

~~(B) SWBT is generally offering access and interconnection pursuant to a statement described in paragraph (1)(B) of this Section.~~

~~(3) **Competitive checklist.** The access and interconnection provided or generally offered by SWBT to other telecommunications service providers meets the requirements of 47 U.S.C. § 271(c)(2)(B), if such access and interconnection includes each of the following:~~

~~(A) Interconnection in accordance with the requirements of 47 U.S.C. § 251(c)(2) and 47 U.S.C. § 252(d)(1);~~

~~(B) Nondiscriminatory access to network elements in accordance with the requirements of 47 U.S.C. § 251(c)(3) and 47 U.S.C. § 252(d)(1);~~

~~(C) Nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by SWBT at just and reasonable rates in accordance with the requirements of 47 U.S.C. § 224;~~

~~(D) Local loop transmission from the central office to the end-user's premises, unbundled from local switching or other services;~~

~~(E) Local transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services;~~

~~(F) Local switching unbundled from transport, local loop transmission, or other services;~~

~~(G) Nondiscriminatory access to:~~

~~(i) 911 and E911 services;~~

~~(ii) Directory assistance services to allow the other carrier's end users to obtain telephone numbers; and,~~

~~(iii) Operator call completion services.~~

~~(H) White pages directory listings for end users of the other telecommunications service provider's telecommunications service;~~

~~(I) Until the date by which telecommunications numbering plan, administration guidelines, or rules are established, nondiscriminatory access to telephone numbers for assignment to the other telecommunications service provider's end users. After that date, compliance with such plan, guidelines or rules;~~

~~(J) Nondiscriminatory access to databases and associated signaling necessary for traffic routing and completion;~~

~~(K) Until the date by which the FCC issues regulations pursuant to 47 U.S.C. § 251 to require number portability, interim telecommunications number portability through remote call forwarding, direct inward dialing trunks, or other comparable arrangements, with as little impairment of functioning, quality, reliability, and convenience as possible. After that date, full compliance with such regulations;~~

~~(L) Nondiscriminatory access to such services or information as are necessary to allow the requesting telecommunications service provider to implement local dialing parity in accordance with the requirements of 47 U.S.C. § 251(b)(3);~~

~~(M) Reciprocal compensation arrangements in accordance with the requirements of 47 U.S.C. § 252(d)(2); and,~~

~~(N) Telecommunications services are available for resale in accordance with the requirements of 47 U.S.C. § 251(c)(4) and 47 U.S.C. § 252(d)(3).~~

SUBCHAPTER 19. UNLAWFUL PRACTICES

PART 1. SLAMMING

165:55-19-1.2. Letter of agency form and content

(a) A telecommunications carrier may use a letter of agency to obtain written authorization and/or verification of an end-user's request to change his or her preferred carrier selection. A letter of agency that does not conform ~~with~~to this Section is invalid for purposes of Part 1 of this Subchapter.

(b) The letter of agency shall be a separate document (or an easily separable document) containing only the authorizing language described in (e) of this Section having the sole purpose of authorizing a telecommunications carrier to initiate a preferred carrier change. The letter of agency must be signed and dated by the end-user to the telephone line(s) requesting the preferred carrier change.

(c) The letter of agency shall not be combined on the same document with inducements of any kind.

(d) Notwithstanding (b) and (c) of this Section, the letter of agency may be combined with checks that contain only the required letter of agency language as prescribed in (e) of this Section and the necessary information to make the check a negotiable instrument. The letter of agency check shall not contain any promotional language or material. The letter of agency check shall contain in easily readable, bold-face type on the front of the check, a notice that the end-user is authorizing a preferred carrier change by signing the check. The letter of agency language shall be placed near the signature line on the back of the check.

(e) At a minimum, the letter of agency must be printed with a type of sufficient size and readable type to be clearly legible and must contain clear and unambiguous language that confirms:

(1) The end-user's billing name and address and each telephone number to be covered by the preferred carrier change order;

(2) The decision to change the preferred carrier from the current telecommunications carrier to the soliciting telecommunications carrier;

(3) That the end-user designates ~~[insert the name of the submitting carrier]~~the named carrier to act as the end-user's agent for the preferred carrier change;

(4) That the end-user understands that only one telecommunications carrier may be designated as the end-user's interstate or interLATA preferred interexchange carrier for any one telephone number. To the extent that a jurisdiction allows the selection of additional preferred carriers (e.g., local exchange, intraLATA/intrastate toll, interLATA/interstate toll, or international interexchange) the letter of agency must contain separate statements regarding those choices, although a separate letter of agency for each choice is not necessary; and.

(5) That the end-user understands that any preferred carrier selection the end-user chooses may involve a charge to the end-user for changing the end-user's preferred carrier.

(f) Any carrier designated in a letter of agency as a preferred carrier must be the carrier directly setting the rates for the end-user.

(g) Letters of agency shall not suggest or require that an end-user take some action in order to retain the end-user's current telecommunications carrier.

(h) If any portion of a letter of agency is translated into another language then all portions of the letter of agency must be translated into that language. Every letter of agency must be translated into the same language as any promotional materials, oral descriptions or instructions provided with the letter of agency.

165:55-19-1.3. Carrier liability for slamming

(a) **Carrier liability for charges.** Any submitting telecommunications carrier that fails to comply with the procedures prescribed in Part 1 of this Subchapter shall be liable to the end-user's properly authorized carrier in an amount equal to ~~150%~~one-hundred and fifty percent (150%) of all charges paid to the submitting telecommunications carrier by such end-user after such violation, as well as for additional amounts as prescribed in 165:55-19-1.6. The remedies provided in Part 1 of this Subchapter are in addition to any other remedies available by law.

(b) **End-user liability for charges.** Any end-user whose selection of telecommunications services provider is changed without authorization verified in accordance with the procedures set forth in Part 1 of this Subchapter is liable for charges as follows:

(1) If the end-user has not already paid charges to the unauthorized carrier, the end-user is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first ~~30~~thirty (30) days after the unauthorized change. Upon being informed by an end-user that an unauthorized change has occurred, the authorized carrier, the unauthorized carrier, or the executing carrier shall inform the end-user of this ~~30-day~~thirty (30) day absolution period. Any charges imposed by the unauthorized carrier on the end-user for service provided after this ~~30-day~~thirty (30) day period shall be paid by the end-user to the authorized carrier at the rates the end-user was paying to the authorized carrier at the time of the unauthorized change in accordance with the provisions of 165:55-19-1.5(e).

(2) If the end-user has already paid charges to the unauthorized carrier, and the authorized carrier receives payment from the unauthorized carrier as provided for in 165:55-19-1.2(a), the authorized carrier shall refund or credit to the end-user any amounts determined in accordance with the provisions of 165:55-19-1.6(c).

(3) If the end-user has been absolved of liability as prescribed by this Section, the unauthorized carrier shall also be liable to the end-user for any charge required to return the end-user to his or her properly authorized carrier, if applicable.

165:55-19-1.4. Procedures for resolution of unauthorized changes in preferred carrier

(a) **Notification of alleged unauthorized carrier change.** Executing carriers who are informed of an unauthorized carrier change by an end-user must immediately notify both the authorized and allegedly unauthorized carrier of the incident. This notification must include the identity of both carriers.

(b) **Referral of complaint.** Any carrier, executing, authorized, or allegedly unauthorized, that is informed by an end-user or an executing carrier of an unauthorized carrier change shall direct that end-user to the Commission for resolution of the complaint.

(c) **Notification of receipt of complaint.** Upon receipt of an unauthorized carrier change complaint, the Commission will notify the allegedly unauthorized carrier of the complaint and order that the carrier remove all unpaid charges for the first 30 days after the slam from the end-user's bill pending a determination of whether an unauthorized change, as defined by 165:55-1-4, has occurred, if it has not already done so.

(d) **Proof of verification.** Not more than ~~30~~thirty (30) days after notification of the complaint, or such lesser time as is required by the Commission, the alleged unauthorized carrier shall provide to the Commission a copy of any valid proof of verification of the carrier change. This proof of verification must contain clear and convincing evidence of a valid authorized carrier change, as that term is defined in 165:55-19-1.4 and 165:55-19-1.5. The Commission will determine whether an unauthorized change, as defined by 165:55-1-4, has occurred using such proof and any evidence supplied by the end-user. Failure by the carrier to respond or provide proof of verification will be presumed to be clear and convincing evidence of a violation.

165:55-19-1.5. Absolution procedures where the end-user has not paid charges

(a) **Applicability.** This Section shall only apply after an end-user has determined that an unauthorized change, as defined by 165:55-1-4, has occurred and the end-user has not paid charges to the allegedly unauthorized carrier for service provided for ~~30~~thirty (30) days, or a portion thereof, after the unauthorized change occurred.

(b) **Removal of charges for the first 30 days.** An allegedly unauthorized carrier shall remove all charges incurred for service provided during the first ~~30~~thirty (30) days after the alleged unauthorized change occurred, as defined by 165:55-1-4, from an end-user's bill upon notification that such unauthorized change is alleged to have occurred.

(c) **Challenging an end-user's allegation of unauthorized charges.** An allegedly unauthorized carrier may challenge an end-user's allegation that an unauthorized change, as defined by 165:55-1-4, occurred. An allegedly unauthorized carrier choosing to challenge such allegation shall immediately notify the complaining end-user that:

(1) The complaining end-user must file a complaint with the Commission within ~~30~~thirty (30) days of either:

(A) The date of removal of charges from the complaining end-user's bill in accordance with (b) of this Section or

(B) The date the allegedly unauthorized carrier notifies the complaining end-user of the requirements of this Section, whichever is later; and

(2) A failure to file such a complaint within this ~~30-day~~thirty (30) day time period will result in the charges removed pursuant to (b) of this Section being reinstated on the end-user's bill and, consequently, the complaining end-user's will only be entitled to remedies for the alleged unauthorized change other than those provided for in 165:55-19-1.3(b)(1). No allegedly unauthorized carrier shall reinstate charges to an end-user's bill pursuant to the provisions of this Section without first providing such end-user with a reasonable opportunity to demonstrate that the requisite complaint was timely filed within the 30-day period described in this Section.

(d) **Procedure if thirty (30) days or fewer of unauthorized charges were incurred.** If the Commission determines after reasonable investigation that an unauthorized change, as defined by 165:55-1-4, has occurred, the Consumer Services Division of the Commission shall issue a factual determination stating that the end-user is entitled to absolution from the charges incurred during the first ~~30~~thirty (30) days after the unauthorized carrier change occurred, and neither the authorized or unauthorized carrier may pursue any collection against the end-user for those charges.

(e) **Procedure if more than thirty (30) days of unauthorized charges were incurred.** If the end-user has incurred charges for more than ~~30~~thirty (30) days after the unauthorized carrier change, the unauthorized carrier must forward the billing information for such services to the authorized carrier, which may bill the end-user for such services using either of the following means:

(1) The amount of the charge may be determined by a re-rating of the services provided based on what the authorized carrier would have charged the end-user for the same services had an unauthorized change, as described in 165:55-1-4, not occurred; or

(2) The amount of the charge may be determined using a ~~50%~~fifty percent (50%) Proxy Rate as follows: Upon receipt of billing information from the unauthorized carrier, the authorized carrier may bill the end-user for ~~50%~~fifty percent (50%) of the rate the unauthorized carrier would have charged the end-user for the services provided. However, the end-user shall have the right to reject use of this ~~50%~~fifty percent (50%) proxy method and require that the authorized carrier perform a re-rating of the services provided, as described in (e)(1) of this Section.

(f) **End-user payments for services provided after the first thirty (30) days.** If the unauthorized carrier received payment from the end-user for services provided after the first ~~30~~thirty (30) days after the unauthorized change occurred, the obligations for payments and refunds provided for in this Section shall apply to those payments.

(g) **Re-billing.** If the Commission determines after reasonable investigation that the carrier change was authorized, the carrier may re-bill the end-user for charges incurred.

165:55-19-1.6. Reimbursement procedures where the end-user has paid charges

(a) **Applicability.** The procedures in this Section shall only apply after an end-user has determined that an unauthorized change, as defined by 165:55-1-4, has occurred and the end-user has paid charges to an allegedly unauthorized carrier.

(b) **Order requirements.**

(1) If the Consumer Services Division of the Commission determines after reasonable investigation that an unauthorized change, as defined by 165:55-1-4, has occurred, it shall issue a factual determination requiring the unauthorized carrier to forward to the authorized carrier the following:

(A) An amount equal to ~~150%~~one hundred and fifty percent (150%) of all charges paid by the end-user to the unauthorized carrier; and

(B) Copies of any telephone bills issued from the unauthorized carrier to the end-user.

(2) This factual determination shall be sent to the end-user, the unauthorized carrier, and the authorized carrier.

(c) **End-user refund or credit by authorized carrier if payment is received.** Within ten days of receipt of the amount provided for in this Section, the authorized carrier shall provide a refund or credit to the end-user in the amount of ~~50%~~fifty percent (50%) of all charges paid by the end-user to the unauthorized carrier. The end-user has the option of asking the authorized carrier to re-rate the unauthorized carrier's charges based on the rates of the authorized carrier and, on behalf of the end-user, seek an additional refund from the unauthorized carrier, to the extent that the re-rated amount exceeds the ~~50%~~fifty percent (50%) of all charges paid by the end-user to the unauthorized carrier. The authorized carrier shall also send notice to the Commission that it has given a refund or credit to the end-user.

(d) **Billing and collection charges.** If an authorized carrier incurs billing and collection expenses in collecting charges from the unauthorized carrier, the unauthorized carrier shall reimburse the authorized carrier for reasonable expenses.

(e) **End-user refund or credit by authorized carrier if payment is not received.** If the authorized carrier has not received payment from the unauthorized carrier as required by (c) of this Section, the authorized carrier is not required to provide any refund or credit to the end-user. The authorized carrier must, within ~~45~~forty-five (45) days of receiving a factual determination as described in (b) of this Section, inform the end-user and the Commission if the unauthorized carrier has failed to forward to it the appropriate charges, and also inform the end-user of his or her right to pursue a claim against the unauthorized carrier for a refund of all charges paid to the unauthorized carrier.

(f) **Reinstatement into programs.** Where possible, the properly authorized carrier must reinstate the end-user in any premium program in which that end-user was enrolled prior to the unauthorized change, if the end-users participation in that program was terminated because of the unauthorized change. If the end-user has paid charges to the unauthorized carrier, the properly authorized carrier shall also provide or restore to the end-user any premiums to which the end-user would have been entitled had the unauthorized change not occurred. The authorized carrier must comply with the requirements of this Section regardless of whether it is able to recover from the unauthorized carrier any charges that were paid by the end-user.

165:55-19-1.7. Preferred carrier freezes

(a) A preferred carrier freeze (or freezes) prevents a change in an end-user's preferred carrier selection for intraLATA/intrastate toll, interLATA/interstate toll, interLATA/intrastate toll, and international toll unless the end-user gives the carrier from whom the freeze was requested his or her express consent. All local exchange carriers who offer preferred carrier freezes must comply with the provisions of this Section. No

local exchange carrier shall impose a preferred carrier freeze on local exchange service.

(b) All local exchange carriers who offer preferred carrier freezes shall offer freezes on a nondiscriminatory basis to all end-users, regardless of the end-user's carrier selections.

(c) Preferred carrier freeze procedures, including any solicitation, must clearly distinguish among telecommunications services (e.g., intraLATA/intrastate toll, interLATA/interstate toll, interLATA/intrastate toll, and international toll) subject to a preferred carrier freeze. The carrier offering the freeze must obtain separate authorization for each service for which a preferred carrier freeze is requested.

(d) **Solicitation and imposition of preferred carrier freezes.**

(1) All carrier-provided solicitation and other materials regarding preferred carrier freezes must include:

(A) An explanation, in clear and neutral language, of what a preferred carrier freeze is and what services may be subject to a freeze;

(B) A description of the specific procedures necessary to lift a preferred carrier freeze; an explanation that these steps are in addition to the Commission's verification rules in 165:55-19-1.4 and 165:55-19-1.5 for changing an end-user's preferred carrier selections; and an explanation that the end-user will be unable to make a change in carrier selection unless he or she lifts the freeze; and

(C) An explanation of any charges associated with the preferred carrier freeze.

(2) No local exchange carrier shall implement a preferred carrier freeze unless the end-user's request to impose a freeze has first been confirmed in accordance with one of the following procedures:

(A) The local exchange carrier has obtained the end-user's written and signed authorization in a form that meets the requirements of (d)(3) of this Section; or

(B) The local exchange carrier has obtained the end-user's electronic authorization, placed from the telephone number(s) on which the preferred carrier freeze is to be imposed, to impose a preferred carrier freeze. The electronic authorization should confirm appropriate verification data (e.g., the end-user's date of birth or social security number) and the information required in (d)(3)(B) of this Section. Telecommunications carriers electing to confirm preferred carrier freeze orders electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect an end-user to a voice response unit, or similar mechanism that records the required information regarding the preferred carrier freeze request, including automatically recording the originating automatic numbering identification; or

(C) An appropriately qualified independent third party has obtained the end-user's oral authorization to submit the preferred carrier freeze and confirmed the appropriate verification data (e.g., the end-user's date of birth or social security number) and the information required in (d)(3)(B) of this Section. The independent third party must not be owned, managed, or directly controlled by the carrier or the carrier's marketing agent; must not have any financial incentive to confirm preferred carrier freeze requests for the carrier or the carrier's marketing agent; and must operate in a location physically separate from the carrier or the carrier's marketing agent. The content of the verification must include clear and conspicuous confirmation that the end-user has authorized a preferred carrier freeze.

(3) **Written authorization to impose a preferred carrier freeze.** A local exchange carrier may accept an end-user's written and signed authorization to impose a freeze on his or her preferred carrier selection. Written authorization that does not conform with this Section is invalid and may not be used to impose a preferred carrier freeze.

(A) The written authorization shall comply with 165:55-19-1.5(b), (c), and (h) concerning the form and content for letters of agency.

(B) At a minimum, the written authorization must be printed with a readable type of sufficient size to be clearly legible and must contain clear and unambiguous language that confirms:

(i) The end-user's billing name and address and the telephone number(s) to be covered by the preferred carrier freeze;

(ii) The decision to place a preferred carrier freeze on the telephone number(s) and particular service(s). To the extent that a jurisdiction allows the imposition of preferred carrier freezes on additional preferred carrier selections (e.g., for intraLATA/intrastate toll, interLATA/interstate toll service, interLATA/intrastate toll, and international toll), the authorization must contain separate statements regarding the particular selections to be frozen;

(iii) That the end-user understands that she or he will be unable to make a change in carrier selection unless she or he lifts the preferred carrier freeze; and

(iv) That the end-user understands that any preferred carrier freeze may involve a charge to the end-user.

(e) **Procedures for lifting preferred carrier freezes.** All local exchange carriers who offer preferred carrier freezes must, at a minimum, offer end-users the following procedures for lifting a preferred carrier freeze:

(1) A local exchange carrier administering a preferred carrier freeze must accept an end-user's written and signed authorization stating her or his intent to lift a preferred carrier freeze; and

(2) A local exchange carrier administering a preferred carrier freeze must accept an end-user's oral authorization stating her or his intent to lift a preferred carrier freeze and must offer a mechanism that allows a submitting

carrier to conduct a three-way conference call with the carrier administering the freeze and the end-user in order to lift a freeze. When engaged in oral authorization to lift a preferred carrier freeze, the carrier administering the freeze shall confirm appropriate verification data (e.g., the end-user's date of birth or social security number) and the end-user's intent to lift the particular freeze.

~~(3) All existing accounts containing the Field Identification ("FID") for basic local exchange freeze will have the FID removed. This shall be accomplished no later than September 1, 2004.~~

SUBCHAPTER 22. RESOLUTION DISPUTES

165:55-22-3. Facilitation

(a) **Informal process.** Facilitation is an informal, voluntary process wherein both parties to the dispute agree to bring the dispute before the Commission and to be bound by the facilitator's decision.

(b) **Facilitation request.** The request for an informal facilitation conference may be made by ~~filing 10 copies of the~~a joint written request ~~with~~to the Director of the Public Utility Division. The joint written request should include the following from each party:

(1) The name, address, telephone number and facsimile number of each party to the interconnection agreement and each party's designated representative;

(2) A description of the parties' efforts to resolve their differences by negotiation;

(3) A list of the narrow issues in dispute, with a cross-reference to the area of the agreement applicable or pertaining to the issues in dispute;

(4) Each party's proposed solution to the dispute; and

(5) Identification of the agreed upon facilitator.

(c) **Facilitator.** The facilitator may be:

(1) Any individual agreed to by the parties, including a Commission employee with knowledge regarding telecommunications; or

(2) An individual selected by the Commission in an open meeting from names submitted by the parties.

(d) **Facilitation conference.** The facilitator shall be responsible for notifying the parties of the time, date, and location of the meeting which shall be held no later than ten (10) business days from the date the request was filed. The parties shall provide the appropriate personnel with settlement authority to discuss and to resolve the disputes at the facilitation conference.

(e) **Procedure.** The facilitation conference shall be conducted as an informal meeting and will not be transcribed. Only parties to the interconnection agreement may participate as parties to the facilitation conference. Interim relief is not applicable for either party to the dispute. Discovery will not be allowed and notice will not be provided concerning the facilitation. At any time during the facilitation, either party may request that the dispute resolution be moved to one of the formal processes set forth in this Subchapter.

(f) **Results of the facilitation conference.** The informal facilitation conference may result in an agreement on the resolution of the dispute described in the request. If an agreement is reached, the agreement will be binding on the parties. In the event that the parties do not reach an agreement as a result of the informal facilitation conference, the parties agree to have the decision of the Commission appointed facilitator be binding on the parties. The facilitator's decision will be binding on both parties. The decision from the informal facilitation conference shall be rendered within thirty (30) days from the joint written request for facilitator.

165:55-22-5. Formal non-expedited dispute resolution

(a) **Commencement.** This procedure is a formal proceeding for dispute resolution and will commence when a party ~~(complainant)~~("complainant") files a complaint with the Court Clerk of the Commission and, on the same day, delivers a copy of the complaint either by hand delivery, certified mail, electronic mail or facsimile to the Director of the Public Utility Division, to the other party ~~(respondent)~~("respondent") to the interconnection agreement from which the dispute arises, to the Office of General Counsel, and to the Office of the Attorney General. If facsimile is used, a certificate of service shall be provided.

(b) **Process.** Unless otherwise ordered by the arbitrator, parties shall file with the Commission Court Clerk's office ~~10~~five (5) copies of pleadings. The complaint shall be in a consistent format approved by the Director of the Public Utility Division and shall include:

(1) The name, address, telephone number, facsimile number of each party to the interconnection agreement, and the complainant's designated representative;

(2) A description of the parties' efforts to resolve their differences by negotiation;

(3) A detailed list of the precise issues in dispute, with a cross-reference to the area or areas of agreement applicable or pertaining to the issues in dispute; and

(4) An identification of pertinent background facts and relevant law or rules applicable to each disputed issue.

(5) The complainant's proposed solution to the dispute.

(c) **Arbitrator.** Upon receipt of a dispute resolution complaint filed under this Section, an arbitrator shall be selected to act for the Commission, unless two or more of the Commissioners choose to hear the complaint *en banc*. The parties shall be notified of the Commission designated arbitrator, or of the Commissioners' decision to act as arbitrator themselves. The arbitrator may be advised on legal and technical issues by members of the Commission Staff. The Commission staff members selected to advise the arbitrator shall be determined by the Director of the Public Utility Division and shall be identified to the parties. Within five (5) days of the selection of the arbitrator being named, any challenge to the appointment shall be brought forth. No parties to the dispute resolution process may have *ex parte* discussions with the arbitrator regarding the complaint, except those persons designated by the Director of the Public Utility Division.

(d) **Response to complaint.** The respondent shall file a response to the complaint within twenty (20) days after the

filing of the complaint and shall serve a copy of the response on the complainant, the Office of the Attorney General, the Office of General Counsel, and to the Director of the Public Utility Division. The response shall specifically affirm or deny each allegation in the complaint. The response shall include the respondent's position on each issue in dispute, a cross-reference to the area or areas of the contract applicable or pertaining to the issue in dispute, and the respondent's proposed solution on each issue in dispute. In addition, the response also shall stipulate to any undisputed facts and identify relevant law or rules applicable to each disputed issue.

(e) **Reply to response to complaint.** The complainant may file a reply within five (5) business days after the filing of the response to the complaint and serve a copy to the respondent, the Office of the Attorney General, the Office of General Counsel, and to the Director of the Public Utility Division. The reply shall be limited solely to new issues raised in the response to the complaint.

(f) **Notice and hearing.** As soon as possible after his or her selection, the arbitrator shall schedule a prehearing conference with the parties to the arbitration. The arbitrator shall make arrangements for the hearing to address the complaint, which shall commence no later than ~~50~~fifty (50) days after filing of the complaint. The arbitrator shall notify the parties, not less than ~~15~~fifteen (15) days before the hearing of the date, time, and location of the hearing. The hearing shall be held in Oklahoma City unless otherwise ordered by the Commission.

(g) **Transcripts.** The hearing shall be transcribed by a court reporter designated by the arbitrator. Copies of the transcript may be obtained from the designated court reporter at the expense of the requesting party.

(h) **Participation.** Only parties to the interconnection agreement, the Commission Staff, or the Office of the Attorney General, may participate as parties in the dispute resolution process subject to this Subchapter, unless otherwise ordered by the Commission upon a showing of good cause.

(i) **Authority of the arbitrator.** The arbitrator has broad discretion in conducting the dispute resolution proceeding. The arbitrator shall have the authority within the Commission to award remedies or relief deemed necessary by the arbitrator to resolve a dispute subject to the procedures established under this Subchapter.

(j) **Discovery.** Parties may obtain discovery by submitting a discovery request consistent with the Commission's Rules of Practice, OAC 165:5, which include requests for inspection and production of documents, requests for admissions, and depositions by oral examination, as provided by the Commission rules and as allowed within the discretion of the arbitrator.

(k) **Pre-filed evidence and witness list.** The arbitrator may require the parties to file a direct case, under the same deadline, and a joint issues list on or before the commencement of the hearing under the following guidelines:

(1) The prepared direct case shall include all of the party's direct evidence, including written direct testimony of all its witnesses and all exhibits that the party intends to offer. The joint issues list shall identify all issues to be addressed, the witnesses who will be addressing each issue, and a short synopsis of each witness's position on each issue. Confidential information shall be treated in accordance with the Commission's Rules of Practice, OAC 165:5.

(2) Each witness presenting written direct testimony shall be available for cross-examination by the other parties to the complaint. The arbitrator shall judge the credibility of each witness and the weight to be given his or her testimony based upon his or her response to cross-examination. If the arbitrator determines that a witness' responses are evasive or non-responsive to the questions asked, the arbitrator may disregard the witness' testimony on the basis of lack of credibility.

(3) The arbitrator may ask clarifying questions at any point during the proceeding and may direct a party or witness to provide additional information as needed to fully develop the record of the proceeding. If a party fails to present information requested by the arbitrator, the arbitrator shall render a recommendation on the basis of the best information available from whatever source derived.

(4) The arbitrator may require the parties to submit post-hearing briefs or written summaries of their positions. The arbitrator shall determine the filing deadline and any limitations on the length of such submissions.

(l) **Recommendation.** Timelines and appeals to the arbitrator's recommendation shall be governed by the following guidelines:

(1) The written recommendation of the arbitrator shall be filed with the Commission within fifteen (15) days after the close of the hearing and shall be faxed to all parties of record in the dispute resolution proceeding. The recommendation of the arbitrator shall be based upon the record of the dispute resolution hearing, and shall include a specific ruling on each of the disputed issues presented for resolution by the parties. The recommendation shall include a narrative report explaining the arbitrator's rationale for each of the rulings included in the final decision.

(2) Within ten (10) days from the date of the arbitrator's recommendation is issued, any party may appeal the arbitrator's recommendation to the Commission *en banc* by the filing of a written appeal. The appellant shall serve, concurrent with filing, copies of the appeal and notice of hearing for the appeal to all parties of record and the arbitrator. The appeal shall be heard by the Commission *en banc* within ten (10) days of the filing of such appeal, unless the Commission orders otherwise.

(3) With respect to the recommendation by the arbitrator, the Commission ~~en banc~~*en banc* may affirm, reverse, or modify the findings of fact or conclusions of law of the arbitrator based on the record, hold additional hearings, or may remand the cause to the arbitrator for further hearing. The Commission shall enter its order on the complaint no later than ~~100~~one hundred (100) days after the filing of the complaint, unless otherwise agreed to by the parties.

165:55-22-7. Formal expedited dispute resolution

(a) **Need for expedited resolution.** This procedure is a formal proceeding for dispute resolution with an expedited ruling when the dispute directly affects the ability of a party

to provide uninterrupted service to its customers or precludes the provisioning of any service, functionality or network element. The arbitrator has the discretion to determine whether the resolution of the complaint may be expedited based on the complexity of the issues or other factors deemed relevant. The provisions and procedures relating to OAC 165:55-22-5 apply, except as otherwise specifically set forth in this Section.

(b) **Response to complaint.** The respondent shall file a response to the complaint within five (5) business days after the filing of a complaint and shall serve a copy of the response on the complainant, the Office of the Attorney General, the Office of General Counsel, and to the Director of the Public Utility Division. The response shall specifically affirm or deny each allegation in the complaint.

(c) **Process.** Any request for expedited ruling shall be filed at the same time and in the same document as the complaint filed pursuant OAC 165:55-22-5. The complaint shall be entitled "Complaint and Request for Expedited Ruling." In addition to the requirements listed in section OAC 165:55-22-5, the complaint shall also state specific circumstances that make the dispute eligible for an expedited ruling.

(d) **Notice and hearing.** After reviewing the complaint and the response, the arbitrator will determine whether the complaint warrants an expedited ruling. If so, the arbitrator shall schedule a prehearing conference with the parties to the arbitration. The arbitrator shall make arrangements for the hearing to address the complaint, which shall commence no later than seventeen (17) days after filing of the complaint. The arbitrator shall notify the parties of the date, time, and location of the hearing not less than three (3) days before the hearing. The hearing shall be transcribed by a court reporter designated by the arbitrator. If the arbitrator determines that the complaint is not eligible for an expedited ruling, the arbitrator shall so notify the parties within five (5) days of the filing of the response.

(e) **Recommendation.** Timeliness and appeals to the arbitrator's recommendation shall be governed by the following guidelines:

(1) The oral recommendation of the arbitrator shall be filed with the Commission within three (3) days after the close of the hearing and shall be faxed to all parties of record in the dispute resolution proceeding. The recommendation of the arbitrator shall be based upon the record of the dispute resolution hearing, and shall include a specific ruling on each of the disputed issues presented for resolution by the parties.

(2) Within three (3) days from the date of issuance of the arbitrator's recommendation, any party may appeal the arbitrator's recommendation to the Commission *en banc* by the filing of a written appeal. The appellant shall serve, concurrent with filing, copies of the appeal and notice of hearing for the appeal to all parties of record and the arbitrator. The appeal shall be heard by the Commission *en banc* within five (5) days of the filing of such an appeal.

(3) With respect to the recommendation by the arbitrator, the Commission *en banc* may affirm, reverse, or modify the findings of fact or conclusions of law of the arbitrator based on the record, hold additional hearings, or may remand the cause to the arbitrator for further hearing.

The Commission shall enter its order on the complaint no later than ~~thirty (30)~~one hundred (100) days after the filing of the complaint, unless otherwise agreed to by the parties.

165:55-22-9. Interim relief

(a) **Need for interim relief.** This Section establishes procedures whereby a party who requests dispute resolution pursuant to OAC 165:55-22-5 or OAC 165:55-22-7 may also request an interim ruling on whether the party is entitled to relief pending the resolution of the merits of the dispute. This relief is intended to provide an interim remedy when the dispute compromises the ability of a party to provide uninterrupted service or precludes the provisioning of scheduled service or as a means to guarantee that funds are available in a billing dispute.

(b) **Filing a request.** Any request for an interim ruling shall be filed at the same time and in the same cause as the complaint filed pursuant to OAC 165:55-22-5 or OAC 165:55-22-7. The heading of the complaint shall include the phrase "Request for Interim Ruling." The complaint shall set forth the specific grounds supporting the request for interim relief pending the resolution of the dispute, as well as a statement of the potential harm that may result if interim relief is not provided. A complaint that includes a request for interim ruling shall be verified by affidavit. Such complaint must list the contact person, address, telephone number, and facsimile number for both the complainant and respondent.

(c) **Service.** The complainant shall serve a copy of the complaint and request for an interim ruling on the respondent, the Office of the Attorney General, the Office of General Counsel, and to the Director of the Public Utility Division by hand-delivery or facsimile on the same day as the pleading is filed with the Commission.

(d) **Hearing.** Within three (3) business days, if feasible, of the filing of a complaint and request for interim ruling, the arbitrator selected under this Subchapter shall conduct a hearing to determine whether interim relief should be granted during the pendency of the dispute resolution process. The arbitrator will notify the parties of the date and time of the hearing by facsimile within one (1) business day of the filing of a complaint and request for interim ruling. The parties should be prepared to present their positions and evidence on factors including but not limited to: the type of service requested; the economic and technical feasibility of providing that service; and the potential harm in providing or not providing the service.

(e) **Ruling.** Based upon the evidence provided at the hearing, the arbitrator shall issue a written ruling on the request within ~~24~~twenty-four (24) hours of the close of the hearing and will notify the parties by facsimile of the ruling. The interim ruling will be effective throughout the dispute resolution proceeding until a final order is issued by the Commission pursuant to this Subchapter. The interim ruling shall have no precedential impact.

SUBCHAPTER 23. ~~WIRELESS~~ ELIGIBLE TELECOMMUNICATIONS ~~CARRIER~~ CARRIERS

PART 1. GENERAL PROVISIONS

165:55-23-1. Requirements

The requirements of this Subchapter pertain to the designation of Eligible Telecommunications Carriers by the Commission pursuant to 47 U.S.C. §214(e) and the provision of Supported Services by ~~designated wireless~~ Eligible Telecommunications Carriers (hereinafter referred to as ~~"wireless ETC" or "ETC"~~ "ETCs"). All ETCs shall comply with federal requirements, the requirements of this Subsection, and the requirements of OAC 165:59-9-1 *et. seq*.

165:55-23-2. ETC Designation

(a) No person shall receive federal Lifeline funds for Oklahoma customers or Connect America Funds for investment in Oklahoma without first being designated an Eligible Telecommunications Carrier ("ETC") by the Commission. A person seeking to be designated an ETC by the Commission shall file an Application with the Commission, meeting the requirements of the Commission's Rules of Practice, OAC 165:5, and shall provide the following additional information in support of the Application:

(1) A description of whether the applicant intends to offer the Supported Services over its own facilities, by resale of another carrier's facilities and/or services, or through a combination of its own facilities and resale of third party facilities and/or services;

(2) A description of the service area for which ETC designation is sought;

(3) A description of the applicant's proposed Supported Services;

(4) A description of the applicant's plans to advertise the availability of Supported Services within the service area sought;

(5) A complete description of the terms, conditions and rates applicable to the applicant's offering of Supported Services.

(b) Each incumbent LEC is designated as an ETC for the territory for which it was certified on the date of the adoption of the Federal Telecommunications Act of 1996.

(c) For the purpose of eligibility to receive federal universal service support under 47 U.S.C. §214(e), an ETC shall, throughout its service territory:

(1) Offer the telecommunications services that are supported by Federal universal service support mechanisms under 47 U.S.C. § 254(c), either using its own facilities or a combination of its own facilities and resale of another telecommunications service provider's services, including the services offered by another eligible telecommunications service provider; and,

(2) Advertise the availability of such telecommunications services and the charges thereof using media of general distribution.

165:55-23-3. Records to be provided to the Commission

(a) **Terms, conditions and rates for Supported Services.** ~~Prior to any wireless carrier, who has been designated an ETC, requesting funds from the Federal Universal Service Fund (FUSF), the Oklahoma Universal Service Fund (OUSF), or the Oklahoma Lifeline Fund (OLF), and within thirty (30) days of receiving ETC status and prior to commencing to provide the Supported Services, the wireless ETC shall make an informational filing with the Commission of a complete set of terms, conditions and rates for its Supported Services. A wireless ETC must post its Terms and Conditions and rates ("Lifeline product") on its website, and may elect to post all of its terms, conditions and rates for its Supported Services on its website or maintain a current copy of its terms, conditions and rates for its Supported Services with the Commission. However, any modification of an ETC's terms, conditions and rates for its Lifeline servicer, including modifications to existing plans and new plans, must be submitted to the Director of PUD 15 days prior to the effective date of such modification for the purpose of the Commission determining whether the modification is in the public interest. Unless the ETC receives written notification that its modification is NOT IN THE PUBLIC INTEREST within 15 days after its submission, then the submission is deemed to be in the public interest and may be implemented. If an ETC seeks a plan that has been determined by the Director of the PUD to not be in the public interest, an application may be filed with the Court Clerk and a determination by Commission order may be sought.~~An ETC shall maintain current terms, conditions and rates applicable to its Supported Services in an approved tariff on file with the Commission or pursuant to Terms of Service posted on its website and provided to the Commission. Any modification to an ETC's terms, conditions and rates for Supported Services, shall be submitted to the Director of Public Utility Division prior to the effective date of such modification. Failure to comply with this Section may result in the filing of an application by the Director of the Public Utility Division to revoke the ~~wireless carrier's ETC~~Telecommunication Service Provider's or wireless provider's ETC designation.

(b) **Location of records.** All records including terms, conditions and rates for its Supported Services, required by this Subchapter shall, ~~at the option of the wireless ETC,~~ be kept at the general office of each ~~wireless~~ ETC and shall be made available to the Commission or its ~~authorized representative~~designee upon reasonable request. The ~~wireless~~ ETC shall ~~keep the Commission advised as to the location of these records and shall make them~~make such records available to the Commission or its designee at reasonable times for examination and inspection at a location designated by the Commission.

(c) **Retention of certification records.** All records, including the ~~signup~~Lifeline application form showing proof of eligibility and a report from the third party verification system that shows the identity and address of the Lifeline customer was verified (unless the ETC has obtained a waiver from the requirement to utilize a third party verification system), shall be preserved for a minimum of ~~five (5)~~three (3) years.

(d) **Required information to be reviewed.** Each ETC shall obtain information as follows: At the time a prospective Lifeline subscriber signs up for initial service, each ETC shall obtain:

(1) a legible copy of the subscriber's ~~sign-up form showing~~Lifeline application or service request form showing the customer's name, physical address and proof of eligibility;

(2) ~~the subscriber's current physical address;~~

~~(3)~~ the subscriber's information necessary to ~~comply with~~demonstrate eligibility under 47 C.F.R. § 54.410; and

(~~4~~3) the subscriber's government issued photo identification unless the ETC utilizes a third party verification system that has been approved by the Director of the Public Utility Division.

(4) Each ETC shall provide annually to the Director of the Public Utility Division a copy of the ETC's FCC Form 555 as filed with Universal Service Administrative Company ("USAC") and the FCC.

(e) **Contact names.** Each ~~wireless~~ ETC shall notify, in writing, the Director of the Public Utility Division and the Director of the Consumer Services Division within thirty (30) days of a change in the company-designated contacts for Public Utility Division and Consumer Services Division issues.

(1) The update shall include the name(s), address(es) and/or telephone number(s) of the designated individual(s).

(2) The contact name(s) provided pursuant to this subsection shall be the individual(s) primarily responsible for:

(A) Providing customer service;

(B) Repair and maintenance;

(C) Answering complaints;

(D) Authorizing and/or furnishing refunds to customers; and,

(E) Terms, conditions and rates of Supported Services.

(f) **Other information.** Each ~~wireless~~ ETC shall promptly furnish such other information as the Commission Staff may reasonably request, unless otherwise ordered by the Commission.

~~(g) **Annual certification under 47 CR § 54.314 and Reporting of Universal Service Offerings.** Each wireless ETC shall submit documentation, as necessary and requested by the Director of the Public Utility Division, for the Commission to file an annual certification with the Administrator of the federal USF and the FCC stating that all federal high-cost support provided to such carriers within that State will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. Such submissions shall be received by the Commission no later than August 1 of each year or upon such other date as is agreed upon between the Commission and the wireless ETC.~~

~~(1) The wireless ETC shall file a report, on a date agreed upon by the wireless ETC and the Commission, which includes:~~

~~(A) A notarized statement that the wireless ETC's Universal Service offering(s) in designated service areas of Oklahoma contain the services required under the Act and Federal Rules for the receipt of USF funds, and~~

~~(B) A description of all the wireless ETC's rate plans, setting forth the rates, minutes of use and terms and conditions of service of said plans, along with confirmation that each such plan provides the Supported Services.~~

(g) **Supported Services.** Each ETC shall provide confirmation that each Lifeline plan of the ETC provides the Supported Services.

(h) **Exchanges.** Each ETC shall retain a listing of all of the exchanges within which the ETC has provided Lifeline Service during the preceding twelve (12) months and the addresses of households who requested service and were denied Lifeline service for reasons other than the household did not meet eligibility requirement.

~~(2) The wireless ETC shall include in the report information specific to designated service areas of Oklahoma including the amount of federal universal service funds received, a description of how such funds have been used and a certification that such funds have been used only for the provision, maintenance and upgrading of facilities and services for which the support is intended. If requested by the Commission, the wireless ETC shall make available to the Commission all documents and other information regarding such expenditures for verification purposes.~~

(~~h~~i) **Annual report of operations.** No later than May 1 each year, unless otherwise determined by the Commission, each ~~wireless~~ ETC shall provide an annual report of operations for the preceding calendar year, to the Director of the Public Utility Division, in a format approved by the Director of the Public Utility Division. In addition, each ~~wireless~~ ETC shall provide a copy of any annual report required to be filed with any federal regulatory agency(ies). As a component part of the annual report of operations, each ~~wireless~~ ETC shall attach a copy of its Annual Report to Stockholders. All non-publicly available information included in the annual report will be considered confidential by the OCC. On or before July 1, of each year, each ETC shall submit its FCC Form 481 to the Commission, in accordance with FCC regulations.

(~~i~~j) **Complaints report.**

~~(1)~~ Each ~~wireless~~ ETC shall maintain a record of customer complaints that it has received regarding Supported Services provided by the ETC, consistent with 47 CFR 54.313(a)(4) and 47 CFR 54.422(b)(2).

~~(2) The wireless ETC will provide complete information and such other information as may be requested, from time to time, by the Commission Staff. These should be maintained for a period of no less than two (2) years.~~

(~~j~~k) **Report attestation.** All reports required by this subchapter to be submitted to the Commission shall be attested to by an officer or authorized agent of the ~~wireless~~ ETC.

(~~k~~l) **Due dates of reports.** All periodic reports required by this Commission must be received on or before the ~~following~~ due dates unless otherwise ~~specified in this Chapter or unless~~

~~otherwise~~ agreed to by the Director of the Public Utility Division~~. Special and additional reports – As may be prescribed by the Commission.~~

(~~l~~m) ~~**Name changes and/or trade name additions and/or address changes.**~~**Changes affecting Customers or Business Operations.** ~~Each wireless ETC~~An ETC proposing changes to operations that affect either customers or business operations in the State, including but not limited to name changes; and additions, modifications or deletions of trade names under which Supported Services will be operated, shall comply with Subchapter 15 of this Chapter.~~shall file with the Commission an application to reflect a change to the name and/or change, deletion or addition of a trade name under which the wireless ETC will be doing business in the State of Oklahoma, and/or change of address that shall become effective, without Commission order, the date of filing such an application, provided the filing contains the attestation required by paragraph (5) of this Subsection. The request for name change or request for change, addition, or deletion of a trade name shall be accompanied by the following, as applicable:~~

~~(1) An amended Certificate of Incorporation effecting a change of name pursuant to 18 O.S. § 1076, 1077 or 1031;~~

~~(2) A Trade Name Report filed with the Secretary of State as provided in 18 O.S. § 1140;~~

~~(3) A Withdrawal of Trade Name Report filed with the Secretary of State as provided in 18 O.S. § 1140.1;~~

~~(4) A Transfer of Trade Name Report filed with the Secretary of State as provided in 18 O.S. § 1140.2; and,~~

~~(5) An attestation that no revisions are being made, except for the name change or change, addition or deletion of a trade name of the Wireless ETC.~~

165:55-23-5. Emergency service reporting requirements

In areas equipped with E911 emergency service, when the end-user's number is changed due to a change of location or service to the end-user or there is a change in service provider with or without a change to the end-user's number, the ~~wireless~~ ETC shall report such changes to the appropriate E911 emergency number database within two (2) business days, or as required by agreement with the appropriate E911 agencies within the state, after completion of service orders. In the event of an error report, the ~~wireless~~ ETC shall correct the error within two (2) business days, unless the agreement with the appropriate E911 agency allows otherwise.

165:55-23-7. Content of bills

~~Wireless ETC bills~~Bills of an ETC shall comply with the Federal Truth in Billing Rules, 47 C.F.R. § 64.2401, for each Supported Service.

165:55-23-9. Billing disputes

(a) In the event of a dispute between an end-user and ~~a wireless~~an ETC, the ~~wireless~~ ETC shall make such investigation as is required by the particular case, and report the results thereof to the end-user.

(b) In the event the dispute is not resolved, the ~~wireless~~ ETC shall inform the end-user that the end-user may utilize the complaint procedures of the Commission's Consumer Services Division. The information to be provided to consumers shall be:

(1) The street address of the Consumer Services Division, which is Oklahoma Corporation Commission, Consumer Services Division, 2101 N. Lincoln Blvd. Suite ~~460~~ 580W, Oklahoma City, OK 73105.

(2) The mailing address of the Consumer Services Division, which is P. O. Box 52000, Oklahoma City, OK 73152-2000.

(3) The telephone numbers of the Consumer Services Division, which are (405) 521-2331 and (800) 522-8154.

(4) The hours of operation of the Consumer Services Division, which are 8:00 a.m. to 4:30 p.m. Monday through Friday.

(c) When a complaint has been made with the Commission's Consumer Services Division, the ~~wireless~~ ETC shall be required to forego disconnect procedures on account of nonpayment of any portion of accumulated disputed charges pending investigation by the Commission's Consumer Services Division. The end-user shall be required to pay the undisputed part of the bill and, if not paid, the ~~wireless~~ ETC may discontinue service.

165:55-23-11. Minimum service standards and Supported Services

(a) The purpose of this Section is to create a uniform standard governing the minimum components of the Supported Services for all end-users of ~~wireless ETCs~~an ETC. Supported Services shall be offered by each ~~wireless~~ ETC pursuant to OAC 165:55-23-15 and 165:55-23-17.

(b) ~~Each wireless~~ If required by the FCC, each ETC shall make available to each end-user subscribing to its Supported Services within its ~~ETC~~ designated service area ~~the following service features~~. ~~Services designated for support: Voice Telephony services shall be supported by federal universal service support mechanisms. Eligible voice telephony services must provide~~voice telephony service with the following functionalities:

(1) voice grade access to the public switched network or its functional equivalent;

(2) ~~dual tone multi-frequency signaling or its functional equivalent;~~

~~(3) local usage for supported services at uniform rates for end-users of a given class within its designated service area~~minutes of use for local service provided at no additional charge to end-users;

(3) access to the emergency services provided by local government or other public safety organizations;

(4) toll limitation for qualifying low-income consumers.

(c) In addition to the foregoing voice telephone functionalities applicable to all ETCs, wireless providers shall provide the following additional service requirement:

(~~4~~1) unless approved by Commission order, at least one Lifeline plan containing unlimited anytime minutes of use for local service on Tribal Land;

(~~5~~2) unless otherwise approved by Commission order, at the ETC's option and in addition to the unlimited minute Lifeline plan, additional Lifeline plans containing at least ~~1,000~~one thousand (1000) minutes of use for local service on Tribal Land or ~~500~~five hundred (500) minutes of local use on non-Tribal Land may be offered~~.~~; and

(3) Any plan that is marketed as an unlimited plan that does not contain unlimited local voice minutes must be approved by the Director of the Public Utility Division. If the Director denies the requested unlimited plan, the ETC may seek approval of the plan by Commission Order, after notice and hearing.

165:55-23-12. Lifeline eligibility requirements

(a) In order to qualify for Lifeline Service Program, an applicant for Lifeline service must meet the requirements of 47 CFR §§ 54.400 through 54.415 and show that they:

(1) Participate in or receive assistance or benefits, as certified by the Department of Human Services, under a program providing:

(A) Temporary Assistance to Needy Families;

(B) Supplemental Nutrition Assistance Program (SNAP) f/k/a Food Stamps, or Food Distribution Program on Indian Reservations, (FDPIR);

(C) Medical Assistance and/or Medicaid; or

(D) Supplemental Security Income.

(2) Participate in Federal Public Housing Assistance;

(3) Participate in Low Income Home Energy Assistance Programs;

(4) Participate in or receive assistance or benefits, as certified by the State Department of Rehabilitation Services, under a program providing vocational rehabilitation, including aid to the hearing impaired; or,

(5) Participate in or receive assistance or benefits, as certified by the Oklahoma Tax Commission, pursuant to the Sales Tax Relief Act, 68 O.S. § 5011 et seq.

(6) Have income that does not exceed one hundred thirty-five percent (135%) of the Federal Poverty Guidelines;

(7) Low-income individuals living on tribal lands may establish their income eligibility by certifying participation in one of the following Federal Assistance Programs:

(A) Bureau of Indian Affairs General Assistance,

(B) Tribally Administered Temporary Assistance for Needy Families (TANF),

(C) Head Start Programs (under income qualifying eligibility provision only),

(D) National School Lunch Program (free lunch program only).

(b) The Lifeline provider shall also advise each end-user customer enrolled in either the State or Federal Lifeline Service program that in order to continue receiving Lifeline service, the end-user customer must provide the ETC with documentary proof of program eligibility annually, in accordance with the recertification requirements at OAC 165:59-9-5, and that the subscriber has a duty to inform the ETC within thirty (30) calendar days whenever the subscriber ceases to be eligible to receive State or Federal Lifeline service support. The requirement to annually provide documentary proof of program eligibility shall not apply if a Lifeline provider utilizes USAC to conduct its annual recertification, unless such documentation is required by USAC at the time of the annual recertification.

165:55-23-13. ~~Extension of facilities~~Service Installation Intervals

~~(a) A wireless ETC shall, throughout the service area for which ETC designation is received, offer the Supported Services, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another ETC, and shall advertise the availability of such Supported Services and the charges therefore using media of general distribution.~~

~~(b) Each wireless ETC, as a condition to its designation as an~~ Each ETC, shall meet the following service installation requirements for customer requests for Supported Services~~and submit itself to Commission oversight, insofar as necessary to determine whether it has met and will continue to meet the requirements placed upon it~~:

~~(1) Customer Requests for Service~~

(~~A~~1) Each ~~wireless~~ ETC shall provide a Supported Service to a requesting customer in accordance with such request no later than ninety (90) days from the date of the customer's bona fide reasonable request.

(~~i~~2) If the ~~wireless~~ ETC determines that it cannot provide ~~service on a reasonable basis~~ Supported Services within that time frame, it may seek a waiver of this requirement from the Commission, and upon notice and, if necessary, hearing, the Commission shall determine if such waiver shall be granted. ~~Upon filing such an application for waiver, the wireless ETC shall provide a copy of the application to the wireless ETC in whose service territory the waiver is sought.~~

~~(ii) If a request comes from a customer within the wireless ETC's existing network, it will provide service to the customer within five (5) business days.~~

~~(iii) If a request comes from a customer residing in any area where the wireless ETC does not provide service, the wireless ETC will take the following series of steps to provide service to such customer.~~

~~(I) It will determine whether the customer's equipment can be modified or replaced to provide acceptable service.~~

~~(II) It will determine whether a roof-mounted antenna or other network equipment can be deployed at the premises to provide service.~~

~~(III) It will determine whether adjustments at the nearest cell site can be made to provide service.~~

~~(IV) It will determine whether there are any other adjustments to network or customer facilities that can be made to provide service.~~

~~(V) It will explore the possibility of offering the resold service of carriers that have facilities available to the customer's location.~~

~~(VI) It will determine whether an additional cell site, a cell extender, or repeater can be employed or can be constructed to provide service, and evaluate the costs and benefits of using high-cost support to serve the customer requesting service.~~

~~(iv) If there is no possibility of providing service short of the measures set forth in the sixth subunit above, within ninety (90) days of the customer's request for service, the wireless ETC shall file an application seeking a waiver in the manner set forth above in unit (b)(1)(A)(i) above. In such application, the wireless ETC shall state:~~

~~(I) The estimated cost of providing service to the requesting customer, and~~

~~(II) The wireless ETC's position regarding whether the request for service is reasonable.~~

165:55-23-15. Lifeline program

(a) Each ~~wireless~~telecommunications service provider or wireless provider who has been designated as an ETC shall ~~file~~submit tariffs to the Commission or post informational terms, conditions, and rates on the Company's website and provide to the Commission;~~with the Commission~~ implementing a program for which qualifying low-income end-users pay reduced charges as a result of the Lifeline support amount described in (e) below .

(b) ~~The wireless~~If the ETC has toll services, the ETC shall offer toll restriction to all qualifying low-income end-users at the time such end-user subscribes to Lifeline service. If the end-user elects to receive toll restriction, that service shall become part of that end-user's Lifeline service. ~~Wireless~~ ETCs may not collect a deposit in order to initiate Lifeline service if the qualifying low-income end-user voluntarily elects toll restriction, where available, from the ~~wireless~~ ETC. If toll restriction is unavailable, or if it is available and the qualifying low-income end-user does not elect toll restriction, the ~~wireless~~ ETC may charge a deposit as detailed in OAC 165:55-9-14.

(c) Each ~~wireless~~ ETC shall publicize the availability of Lifeline service throughout their designated ETC service area in a manner reasonably designed to reach those likely to qualify for the service.

(d) Qualifying end-users must meet the eligibility criteria set out in OAC ~~165:59-9-3~~ 165:55-23-12.

(e) ~~For a qualifying low-income end-user who is not an eligible resident of Tribal lands, the Lifeline support amount shall be sufficient to cause the rate paid by the end-user to be equivalent to the rate the end-user would pay for Lifeline service had the end-user received Lifeline service from the Incumbent LEC in whose service territory the end-user would receive wireline local exchange service.~~For a qualifying low-income end-user who is not an eligible resident of Tribal lands, the Lifeline support amount shall not exceed the federal support amount at 47 CFR §54.403(a)(1) plus the state support amount established by Commission order or by 17 O.S. §139.105. For an eligible low-income end-user who lives on Tribal Land, the Lifeline support amount shall not exceed the federal support amount at 47 CFR §54.403(a)(1) plus the state support amount established by Commission order or by 17 O.S. §139.105.

(f) The ~~wireless~~ ETC shall instruct applicants to the Lifeline program to indicate, at the time of application, in writing, all qualifying programs under which the applicant is eligible for or receives assistance or benefits.

(g) The wireless ~~ETC~~provider must provide access to its own customer service department by dialing 611 from the wireless handset or have a toll free number for contacting the ETC programmed in the phone and clearly identified.

~~(h) All enrollment in any Lifeline Services from any outdoor mobile location is prohibited unless the following conditions are met:~~

~~(1) There are at least two banners identifying the name of the ETC, in print that is readable from at least 30 feet away;~~

~~(2) The banners are at least 3 foot by 5 foot in size and the identification of the ETC takes up at least 50 percent of the banner;~~

~~(3) Employees must wear a shirt that has the name of the ETC on it permanently affixed to the shirt,~~

~~(4) The available terms, conditions and rates for the Lifeline product(s) must be prominently posted at the location where the marketing is taking place;~~

~~(5) The marketer must have permission from either the owner of the property where the marketing is taking place or from the individual responsible for the property;~~

~~(6) The marketer must have all required city and county licenses necessary for selling a service at that location; and~~

~~(7) The marketing must be done in a manner that it does not create a traffic hazard or distraction.~~

~~(8) Marketing may only be done from a tent of at least 10 foot x 10 foot in size or from an enclosed trailer or panel truck that has the name of the ETC permanently affixed on the truck or trailer in letters that are at least 18 inches in height.~~

~~(9) The ETC must provide PUD a list of locations by email where mobile marketing is taking place, including the date, time and location, prior to the mobile marketing taking place, or maintain an active phone number the Commission can call or a web site the public can view, that identifies all mobile marketing locations and times for at least the following three days;~~

~~(10) The ETC has obtained a waiver from the Director of the Public Utility Division regarding a specific requirement of this paragraph.~~

(~~i~~h) Any wireless handset provided in conjunction with the Lifeline Service must clearly identify the provider of the service.

(~~j~~i) An ETC may not provide Lifeline Service purely by resale without a Commission order.

(~~k~~j) An approved Lifeline product may not be modified without submitting the modification to the Director of the Public Utility Division at least ~~15~~fifteen (15) days prior to the effective date of the proposed change for the purpose of receiving a determination whether the modification is in the

public interest. Unless the ETC receives written notification that its modification is NOT IN THE PUBLIC INTEREST within ~~15~~fifteen (15) days after its submission, the submission is deemed to be in the public interest and may be implemented.

(~~l~~k) The ETC shall utilize a third party verification system that has been approved by the Director of ~~PUD~~Public Utility Division to verify the customer's identity and address, or obtain a waiver from the Director of the Public Utility Division from this requirement.

(~~m~~l) The ETC must retain a copy of the signed application for Lifeline Service, and any recertification information for ~~five (5)~~three (3) years.

(~~n~~m) The ETC shall maintain a database sufficient to identify any duplicates among all companies affiliated with the ETC.

(~~o~~n) Any Lifeline plan on Tribal Land must include a minimum of ~~1000~~one thousand (1000) minutes of local voice use or unlimited domestic calling, to be considered in the public interest. Any Lifeline plan on non-Tribal Land must include a minimum of ~~500~~five hundred (500) minutes of local voice usage to be considered in the public interest.

~~(p) All marketing efforts must clearly identify the ETC actually providing the Lifeline Service.~~

(~~q~~o) In addition to other remedies available to the Commission, violations of the marketing rules may result in a minimum of a ~~30~~thirty (30) days suspension of an ETC's ability to sign up new customers.

(p) The ETC shall comply with the recordkeeping requirements with respect to records on customer identity and addresses, along with corresponding documentation confirming customer eligibility for either State or Federally supported Lifeline Service, as identified in 17 O.S. §139.105.

(q) If there is no usage of the wireless provider's handset for sixty (60) days, the ETC shall de-enroll the customer, according to federal guidelines.

165:55-23-16. Limitations on Marketing of Supported Services by ETCs

(a) All marketing efforts, including outdoor mobile marketing and door to door sales, must clearly identify the ETC by its d/b/a name.

(b) All enrollment in any Lifeline Services from any outdoor mobile location is prohibited unless the following conditions are met:

(1) There are at least two banners identifying the name of the ETC, in print that is readable from at least thirty (30) feet away;

(2) The banners are at least three (3) foot by five (5) foot in size and the identification of the ETC takes up at least fifty percent (50%) of the banner;

(3) Employees must wear a shirt that has the ETC's d/b/a name permanently affixed to the shirt;

(4) The available terms, conditions and rates for the Lifeline product(s) must be prominently posted at the location where the marketing is taking place;

(5) The marketer must have permission from either the owner of the property where the marketing is taking place or from the individual responsible for the property;

(6) The marketer must have all required city and county licenses necessary for selling a service at that location; and

(7) The marketing must be done in a manner that it does not create a traffic hazard or distraction.

(8) Marketing may only be done from a tent of at least ten (10) foot x ten (10) foot in size or from an enclosed trailer or panel truck that has the name of the ETC permanently affixed on the truck or trailer in letters that are at least eighteen (18) inches in height. If the tent is clearly marked with the name of the ETC on the top of the tent, the tent markings may be considered as one of the two banners required by paragraph (b)(1) of this Section.

(9) The ETC must provide PUD a list of locations by email where mobile marketing is taking place, including the date, time and location, prior to the mobile marketing taking place, in a format prescribed by the Director of the Public Utility Division. The carrier must also notify PUD of any changes to times or cancellations of previously scheduled events, prior to the change or cancellation. In addition, the ETC shall maintain an active phone number the Commission can call to obtain information regarding past marketing events. The information regarding past marketing events shall be retained by the ETC for a minimum of six (6) months.

(10) The ETC has obtained a waiver from the Director of the Public Utility Division regarding a specific requirement of this paragraph.

(c) All enrollment from door to door marketing is prohibited unless the following conditions are met:

(1) Enrollment forms used for door to door marketing must have clear disclosure that customers will lose any existing landline Lifeline service if they enroll for Lifeline service from the door to door activity;

(2) Employees conducting door to door sales must wear a shirt that has the ETC's d/b/a name permanently affixed to the shirt;

(3) The customer must be offered a copy of the terms, conditions and rates for the Lifeline product they select;

(4) The marketer must have appropriate licenses for door to door sales;

(5) The marketer must provide PUD an address range, date and time where door to door marketing will take place, prior to the marketing being initiated.

(6) The ETC has obtained a waiver from the Director of the Public Utility Division regarding a specific requirement of this paragraph.

165:55-23-17. Link-up program on Tribal Lands

(a) Each ~~wireless~~ ETC providing service on Tribal Land and receiving High Cost Support on Tribal lands, pursuant to 47 CFR Part 54, Subpart D, shall file informational tariffs that offer a Link-up assistance program. This program shall offer:

(1) For an eligible resident living on Tribal Land, a reduction consistent with 47 CFR §54.413(a)(1). The charge from which the reduction is made shall not exceed the customary charge for commencing telecommunications service for a single telecommunications connection

by customers initiating non-Lifeline service with the ~~wireless~~ ETC.

(2) A deferred payment schedule consistent with 47 CFR §54.413(a)(2). The charge assessed for initiating service may include any charges that the ~~wireless~~ ETC customarily assesses to connect end-users, but may not include any security deposit requirements.

(b) A qualifying low-income end-user who resides on Tribal land may choose one or both of the programs set forth in (a)(1) and (a)(2) above of this Section.

(c) ~~A wireless~~An ETC that is receiving federal High-cost support on Tribal land, pursuant to 47 CFR Part 54, Subpart D, shall allow an end-user to receive the benefit of the Link-up program for a second or subsequent time only for service billed at a principal place of residence with an address different from the residence address at which the Link-up assistance was provided previously.

(d) ~~A wireless~~An ETC shall publicize the availability of Link-up support throughout its designated service area, in a manner reasonably designed to reach those likely to qualify for the support.

(e) The end-user qualification criteria for Link-up shall be the same as the criteria established for Lifeline in accordance with OAC 165:59-9-3.

165:55-23-19. Responsibility for adequate and safe service

(a) ~~A wireless~~An ETC is responsible for providing adequate and efficient ~~wireless~~ service to every served end-user for which the ~~wireless~~ ETC reports and receives federal or state universal service support.

(b) ~~A Wireless~~An ETC that uses its own facilities to provide Supported Service shall install and maintain its system so as to render safe, efficient, and continuous service, and shall keep all of its equipment and facilities in a good state of repair.

165:55-23-21. Emergencies

All ~~wireless~~ ETCs shall make adequate provision for emergencies in order to prevent interruption of ~~continuous ETC telephone service~~Supported Services throughout its ~~Supported Service~~designated service area.

165:55-23-23. Response to customer complaint inquiries

~~A wireless~~An ETC shall respond to the Commission upon written or electronic inquiry from the Commission within the following time periods:

(1) Inquiries regarding disconnection, suspension or termination of Supported Services - within one (1) business day of receipt of inquiry from the Commission.

(2) Inquiries other than for disconnection, suspension or termination of Supported Services - within three (3) business days of receipt of inquiry from the Commission.

PART 3. TRANSMISSION OBJECTIVES

165:55-23-50. Service standards; sufficient operating and maintenance force

~~A wireless~~An ETC shall maintain an operating and maintenance force sufficient to meet service objectives and minimum standards for restoration of service after interruption as follows:

(1) Provisions will be made to receive customer trouble reports at all times, twenty-four (24) hours per day.

(2) Provision will be made to correct interruptions of service to persons and agencies required to respond to emergencies involving human life and safety at all times, consistent with the bona fide needs of the end-user and the availability and safety of ~~wireless~~ ETC personnel.

165:55-23-52. Records of trouble reports

(a) Each ~~wireless~~ ETC shall make a full and prompt investigation of every trouble report made to it by its end-users, either directly or through the Commission.

(b) The ~~wireless~~ ETC shall maintain its network so as to minimize customer trouble reports for Supported Services in an economical manner, but shall not exceed eight (8) reports per one hundred (100) customers per month per service area averaged over a three-month period. An occurrence of a violation of this procedure shall be considered as each day in the month for which the three-month average of trouble reports for that month and the preceding two (2) months exceed this criteria for the service area in question.

(c) The response of a ~~wireless~~ ETC to customer trouble reports shall be eighty-five percent (85%) of all trouble reports cleared within twenty-four (24) hours.

165:55-23-54. Notice of service interruptions

(a) The Commission shall be notified, through the Director of the Consumer Services Division~~,~~and the Commission's Public Information Officer, of all interruptions in Supported Services ~~causing~~, which cause a customer to not have access to ~~one or more cell sites~~Supported Services within the designated service area for more than twelve (12) hours; ~~a mobile switching office~~ or any interruption which, in the judgment of the ~~wireless~~ ETC, may cause a high degree of public interest or concern.

(b) The Commission notification process required in subsection (a) of this Section, may be accomplished by facsimile, and email twenty-four (24) hours a day, seven (7) days a week; or by phone, during the business hours of 8:00 a.m. through 4:30 p.m., Monday through Friday, and should consist of the following:

(1) An initial contact to advise of the outage; the cause of such outage; the area affected; and, the estimated time for repair;

(2) Intermediate contact to provide status reports, as deemed necessary by the telecommunications service provider, or as may be requested by the Commission Staff; and,

(3) ~~A conclusory contact~~Concluding information detailing the results and completion of the restoration of service.

165:55-23-56. Restoration of service plan

Each ~~wireless~~ ETC shall have a written restoration of service plan (Plan) to be followed during interruptions in Supported Services.~~of which the Commission is to be notified under OAC 165:55-13-52. Each wireless ETC shall submit its Plan by September 30 of each year to the Commission through the Director of the Consumer Services Division. In lieu of submitting a Plan, a wireless ETC may submit a letter confirming that a previously submitted Plan has not changed or detailing changes to the Plan. The Plan shall contain the name and telephone numbers of company designated liaison(s) to be contacted during emergency periods by Commission staff during business and non-business hours. The Plan should indicate that the wireless ETC is prepared to take the following types of action where necessary:~~

~~(1) To make an initial assessment of the extent of the Supported Service interruption in order to comply with the reporting requirements of OAC 165:55-13-52(b)(1).~~

~~(2) To make a determination if the Supported Service interruption can be restored by the use of in-house personnel only, or if contractors (personnel obtained from outside resources) will be required.~~

~~(3) To provide priority consideration to restoration of Supported Service, where feasible, to emergency services (hospitals, law enforcement and fire fighting entities).~~

~~(4) To make intermediate assessments of the restoration of Supported Service in order to comply with the requirements of OAC 165:55-13-52(b)(2).~~

~~(5) To make a conclusory assessment of the restoration of Supported Service in order to comply with the requirements of OAC 165:55-13-52(b)(3).~~The Plan shall be submitted to the Commission upon request.

165:55-23-58. Customer choice

(a) Where choices are available, every customer shall have the right to choose his or her telecommunications service provider, whether wireless or wireline.

(b) ~~A wireless~~An ETC shall not enter into a contract with the owner or manager of multi-tenant dwellings to exclusively provide Supported Services to the exclusion of other telecommunications service providers.

SUBCHAPTER 25. HOMELAND SECURITY AND CRITICAL INFRASTRUCTURE

165:55-25-1. Purpose and scope

(a) The purpose of this Subchapter is to encourage facilities-based providers (FBPs) to take all reasonable measures necessary to protect their critical infrastructures from extended interruption of service from all extraordinary events, natural and man-made.

(b) The Corporation Commission encourages FBPs to develop, implement, and maintain Homeland Security and Critical Infrastructure Plans according to the industry standards enumerated in ~~sub-section~~subsection (d) below.

(c) To the extent that a FBP seeks cost recovery for the implementation of Homeland Security and/or Critical Infrastructure protections, the FBP shall comply with all provisions of this Subchapter.

(d) Each FBP serving Oklahoma jurisdictional customers is encouraged to follow the most current Network Reliability and lnteroperability Council (NRIC) Best Practices (http://www.atis.org/bestpractices/Search.aspx) security guidelines and standards and the National Fire Protection Association's ("NFPA") NFPA 1600 - Standard on Disaster/Emergency Management and Business Continuity Programs (http://www.nfpa.org/assets/files/PDF/NFPA1600.pdf), as may be amended from time to time, for use as guidelines for protecting the FBP's Critical Infrastructure from extended service interruption.

(e) Each FBP seeking cost recovery for security measures from Oklahoma jurisdictional customers shall develop, implement, and maintain a Critical Infrastructure and Security Plan in accordance with this Subchapter.

(f) If the FBP has implemented a Security Plan or process in accordance with the applicable industry guidelines but is not seeking or receiving cost recovery for security-related costs, the FBP shall submit the Certification Letter required by OAC 165:55-25-7(f) and the Plan shall be subject to review pursuant to the Authorized Participation and Confidentiality provisions of OAC 165:55-25-10 and OAC 165:55-25-11. The FBP is not otherwise required to comply with the provisions of this Subchapter.

(g) The Commission retains its jurisdictional and supervisory authority to address the reasonableness and/or prudence of any proposed security cost recovery.

(h) Nothing in this Subchapter shall relieve any FBP from any duty otherwise prescribed by the laws of the State of Oklahoma or the Commission's rules.

(i) Nothing in this Subchapter is intended to divest the FBP of its right to object to any discovery requests from intervenors seeking access to "Highly Sensitive Confidential" materials.

(j) If any provision of this Subchapter is held invalid, such invalidity shall not affect other provisions or applications of this Subchapter which can be given effect without the invalid provision or application, and to this end, the provisions of this Subchapter are declared to be severable.

165:55-25-3. Definitions

The following words and terms, when used in this Subchapter 25, shall have the following meaning, unless the context clearly indicates otherwise:

"Annual Report" means the Annual Report submitted by Commission Staff to the Commission ~~beginning December 30, 2005 and~~ by July 1 of each year ~~thereafter~~, summarizing the results of Staff's review of each FBP's Security Plan (and any Plan Update Reports), along with any recommendations that Staff may have regarding such Plan(s).

"Authorized Participant" means those persons authorized by the FBP or as may otherwise be authorized by law and/or ordered by the Commission, to view highly sensitive confidential information. Such authorization shall be granted

on a case-by-case basis and may extend to the FBP, state government officials, persons having been granted intervenor status by the Commission and Commission authorized designees of the parties.

"Certification Letter" means the written certification to the Director of the Public Utility Division made ~~August 1, 2005 and~~by March 1 of each ~~subsequent~~ year ~~thereafter~~, indicating that the FBP has updated the Plan and/or previous Plan Update Reports, has a Plan but is not seeking cost recovery or has no Plan in place.

"Critical Infrastructure" means the property of a FBP located in the State of Oklahoma, comprised of either physical assets or computer software which, if severely damaged or destroyed, would have a significant impact on the ability of the FBP to serve large numbers of customers for an extended period of time, would have a detrimental impact on the reliability or operability of the telecommunications grid, or would cause significant risk to public health and safety.

"FBP" or **"Facilities-Based Provider"** means all carriers regulated by the Commission, other than wireless Eligible Telecommunications Carriers, that own, operate or otherwise control facilities, network and /or other physical plant used to provide telecommunications to persons in Oklahoma.

"Highly Sensitive Confidential" means that the information is of such a sensitive nature that its public disclosure could be harmful to the security of a FBP's critical infrastructure and as such it may only be viewed by those persons authorized by the FBP or as may otherwise be ordered by the Commission.

"NFPA" means National Fire Protection Association.

"NRIC" means Network Reliability and Interoperability Council.

"Plan" means a Homeland Security and Critical Infrastructure Plan including any subsequent Plan Update Reports that have been prepared with reference to NRIC and/or NFPA guidelines.

"Plan Update Report" means the written redlined changes made by the FBP updating the Plan and/or previous Plan Update Reports. At the FBP's option, changes will either be redlined or a history of changes may be maintained.

"Security Cost Rider" means the per billing unit rate mechanism whereby a FBP may, upon approval and Order of the Commission, recover the costs of providing security for its Critical Infrastructure as defined under this Subchapter 25.

165:55-25-5. FBP Security Plan

(a) Each FBP is encouraged to prepare and make available for inspection, a "Homeland Security and Critical Infrastructure Plan" ("Plan") that has been prepared with reference to the NRIC safety guidelines and standards.

(b) The Plan shall be marked as "Highly Sensitive Confidential" and designate those facilities that the FBP considers to be Critical Infrastructure (physical assets and computer software as defined in OAC 165:55-25-3 above), and shall set forth the FBP's measures to secure such facilities from extended service interruption. The Plan shall also include an estimate of the costs necessary to achieve such measures.

(c) The Plan shall remain on site at the FBP's business office in accordance with OAC 165:55-25-7(g) below and shall have the most current version of the redlined Plan Update Report attached to the clean version of the FBP's latest Plan. At the FBP's option, changes will either be redlined or a history of changes may be maintained.

(d) The Plan shall list all locations deemed by the FBP to be critical as well as identification of any subsequently increased security measures. All locations and security measures shall be identified by code known only to the utility and designated state government officials and their designees.

(e) Any subsequent security measures identified in the Plan shall contain an estimate of the cost necessary to implement such measures, a description of the measures necessary to adequately secure each specific location and an estimated schedule for completion of each measure.

(f) All locations identified by the Plan that require additional security measures shall be prioritized by the FBP.

(g) ~~Beginning December 30, 2005 and on~~On July 1 of each year ~~thereafter~~, the Commission Staff shall submit an Annual Report marked as "Highly Sensitive Confidential" to the Commission summarizing the results of Staff's review of each FBP's Plan (and any Plan Update Reports), along with any recommendations that Staff may have regarding such Plan(s).

(h) ~~Beginning December 30, 2005, where~~When the Attorney General elects to submit recommendations to the Commission regarding a FBP's Plan, such recommendations shall be marked as "Highly Sensitive Confidential" and shall also be due by July 1 of each subsequent year thereafter.

165:55-25-7. Reporting requirements

(a) Subsequent to the preparation of the initial Plan prepared under OAC 165:55-25-5(a), each FBP shall prepare a Plan Update Report by March 1 of each succeeding year, following the same format as the initial Plan with redlines of all new changes, marked "Highly Sensitive Confidential" and kept on site at the FBP's business office.

(b) Each subsequent Plan Update Report shall update the previous year's report by indicating for each specific coded location, all costs and completion dates (actual and projected) for all current and prior additional security measures claimed under this Subchapter.

(c) For those security measures previously reported that have not yet been completed, revised estimated costs and estimated completion dates shall be provided.

(d) The Plan Update Report shall also include (by specific location) a description of each proposed security measure that has not been previously reported, the estimated costs for each, as well as the estimated completion date for each measure.

(e) Costs reflected in the initial Plan and in subsequent Plan Update Reports, whether estimated or actual, shall be identified as either capital or expense costs.

(f) ~~Beginning August 1, 2005 and by~~By March 1 of every year ~~thereafter,~~ each FBP shall submit a Certification Letter to the Director of the Public Utility Division, marked as "Highly Sensitive Confidential" and certifying that as of the date of the Certification Letter:

(1) The FBP does not have a Homeland Security and Critical Infrastructure Plan as contemplated and defined by this Subchapter;

(2) The FBP does not have a Homeland Security and Critical Infrastructure Plan as contemplated or defined by this Subchapter but has otherwise taken steps to secure its facilities and Critical Infrastructure and is not seeking cost recovery under this Subchapter;

(3) The FBP does have a Plan but is not seeking cost recovery; or

(4) The FBP has prepared its Plan Update Report updating the Plan and/or previous year's Plan Update Report and that the redlines contained within the current Plan Update Report encompass in the entirety, all of the changes made to the FBP's Plan since the Plan's inception or the previous year's certification and that the Plan is available for Commission and/or Attorney General review at the FBP's local place of business.

(g) A FBP shall not be required to file its initial Plan or any of its subsequent Plan Update Reports with the Commission. Each FBP shall instead, secure and maintain on site, at the FBP's local place of business, its initial Plan and all subsequent Plan Update Reports.

[OAR Docket #15-449; filed 6-12-15]

TITLE 165. CORPORATION COMMISSION CHAPTER 59. OKLAHOMA UNIVERSAL SERVICE AND OKLAHOMA LIFELINE

[OAR Docket #15-450]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
165:59-1-1. Purpose and title [AMENDED]
165:59-1-2. Jurisdiction [AMENDED]
165:59-1-4. Definitions [AMENDED]
Subchapter 3. Oklahoma Universal Service Fund
Part 1. Oklahoma Universal Services
165:59-3-1. Oklahoma Universal Services [AMENDED]
Part 3. Oklahoma Universal Service Fund
165:59-3-10. Use of the Oklahoma Universal Service Fund [AMENDED]
165:59-3-11. How the Oklahoma Universal Service Fund shall be funded [AMENDED]
Part 5. Administration of the OUSF
165:59-3-32. Audits of the Fund [AMENDED]
165:59-3-34. Resolution of disputes regarding contributions to the OUSF and OLF [AMENDED]
165:59-3-38. Violations [AMENDED]
Part 7. Contributions to the OUSF
165:59-3-40. Contributions to the OUSF [AMENDED]
165:59-3-42. Reporting requirements [AMENDED]
165:59-3-44. Amount of contributions and charges assessed for the OUSF [AMENDED]
165:59-3-46. Recovery of OUSF contributions [AMENDED]
Part 9. Requests for OUSF funding
165:59-3-60. Requests for funding from the OUSF [AMENDED]
165:59-3-61. Forms for requesting funding from the OUSF [AMENDED]
165:59-3-62. Procedures for requesting funding from the OUSF [AMENDED]
Subchapter 7. Special Universal Services
165:59-7-1. Reimbursement from the OUSF for Special Universal Service [AMENDED]
165:59-7-6. Telemedicine access for eligible healthcare entities [AMENDED]
165:59-7-8. Internet access to public schools and libraries [AMENDED]
165:59-7-10. Other sources of funds [AMENDED]
165:59-7-17. Disclosure on bill regarding provided Special Universal Services [AMENDED]
Subchapter 9. Oklahoma Lifeline Fund
Part 1. Lifeline Service Program
165:59-9-1. Purpose of Oklahoma Lifeline Fund [AMENDED]
165:59-9-3. Oklahoma Lifeline Service Program [AMENDED]
165:59-9-5. Recertification of Lifeline eligibility [AMENDED]
165:59-9-6. Retention of Lifeline Eligibility Records [NEW]
Part 3. Administration of the Oklahoma Lifeline Fund
165:59-9-13. Audits [AMENDED]
165:59-9-17. Reporting requirements [AMENDED]
Part 5. Contributions and Reimbursements
165:59-9-23. Amount of contribution [AMENDED]
165:59-9-27. Recovery of contribution [AMENDED]
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Amendments and deletions to existing Commission rules in Chapter 59 were needed to comply with the Oklahoma Administrative Procedures Act, clarify the Commission's rules, and correct grammar, as well as standardize the way that numbers are written with a word and then the number in parenthesis. Additionally, the rules were amended to provide additional guidance in the processing of requests for OUSF funding.
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 1. GENERAL PROVISIONS

165:59-1-1. Purpose and title

(a) This Chapter establishes the Oklahoma Corporation Commission Rules and Regulations ~~Governing the Provisioning of Oklahoma's Universal Services and Lifeline Service Program in conformance with~~implementing the Oklahoma Telecommunications Act of 1997 (hereinafter referred to as the "Oklahoma Telecommunications Act"). This Chapter shall

be cited as the Oklahoma Universal ~~Services and the~~Service and Oklahoma Lifeline Rules.

(b) The purpose of this Chapter is to establish such rules pertaining to Universal Services and the Oklahoma Lifeline Service Program as are necessary and appropriate to implement the Oklahoma Telecommunications Act ~~of 1997~~.

(c) This Chapter describes:

(1) The services supported by the Oklahoma Universal Service Fund ("OUSF") and the Oklahoma Lifeline Fund ("OLF");

(2) Who shall make contributions to the OUSF and the OLF, and the methodology for calculating those contributions;

(3) The eligibility criteria to receive OUSF and OLF funding; and,

(4) The procedures for requesting, calculating and distributing OUSF and OLF funding.

(d) This Chapter also establishes the guidelines for administration of the OUSF and the OLF.

165:59-1-2. Jurisdiction

The Oklahoma Corporation Commission has jurisdiction to enact this Chapter by virtue of Article IX § 18 of the Constitution of the State of Oklahoma, the Oklahoma Telecommunications Act ~~of 1997~~ and the Federal Telecommunications Act of 1996. The Commission has the authority to assess a charge upon all telecommunications carriers, in conformance with federal and state law to support the ~~state~~ objectives for Oklahoma Universal Services and Oklahoma Lifeline Service.

165:59-1-4. Definitions

The following words and terms, when used in this Chapter, shall have the same meaning as defined in the Oklahoma Telecommunications Act, provided the words and terms, which are not defined in the Oklahoma Telecommunications Act, shall have the following meaning, unless the context clearly indicates otherwise:

~~**"Access line"** means the facility provided and maintained by a telecommunications service provider, which permits access to or from the public switched network.~~

"Administrator" means the person(s) or entity(ies) responsible for administering the Oklahoma Universal Service Fund and/or the Oklahoma Lifeline Fund.

"Bona fide request" means a written request delivered to a telecommunications carrier requesting services provided for in this Chapter.

"Carrier of Last Resort" means a telecommunications service provider as designated by the Commission pursuant to OAC 165:55-17-29.

"Commercial mobile radio service provider" means a carrier who provides wireless telecommunications services.

~~**"Commission"** means the Oklahoma Corporation Commission.~~

~~**"Competitive local exchange carrier" ("Competitive LEC" or "CLEC")** means, with respect to an area or exchange, a telecommunications service provider that is certificated by the Commission to provide local exchange services in that area or exchange within the State of Oklahoma after July 1, 1995.~~

~~**"Competitively neutral"** means not advantaging or favoring one person over another.~~

"Customer" or **"Subscriber"** means any person, firm, partnership, cooperative corporation, corporation or lawful entity that receives telecommunications services.

"Eligible healthcare entity" means a not-for-profit hospital; county health department; city-county health department; not-for-profit mental health and substance abuse facility as defined in this Section; and federally qualified health center in Oklahoma. Eligible healthcare entity also includes telemedicine services provided by the Oklahoma Department of Corrections at facilities identified in 57 O.S. § 509.

"Eligible local exchange telecommunications service provider" means any incumbent ~~LEC that was designated as an eligible~~ local exchange telecommunications service provider, its successors and assigns, which owned, maintained and provided facilities for universal service within a local exchange area on January 1, 1996,~~pursuant to OAC 165:55-17-29~~ and any provider of telecommunications service ~~provider~~ that has been determined to be an eligible local exchange telecommunications service provider pursuant to ~~OAC 165:59-3-14~~the Oklahoma Telecommunications Act.

"Eligible Telecommunications Carrier" ("ETC") means a common carrier designated by the Commission pursuant to OAC 165:55-23-2 and 47 U.S.C. §§ 254 and 214(e).

~~**"End-User Common Line Charge"** means the flat rate monthly interstate access charge required by the Federal Communications Commission that contributes to the cost of local service.~~

~~**"Enhanced service"** means a service that is delivered over communications transmission facilities and that uses computer processing applications to:~~

~~(A) Change the content, format, code, or protocol of transmitted information;~~

~~(B) Provide the customer new or restructured information; or,~~

~~(C) Involve end-user interaction with information stored in a computer.~~

"Enhanced service provider" means a provider of enhanced service.

~~**"Exchange"** means a geographic area established by an incumbent local exchange telecommunications provider as filed with or approved by the Commission for the administration of local telecommunications service in a specified area which usually embraces a city, town, or village and its environs and which may consist of one or more central offices together with associated plant used in furnishing telecommunications service in that area.~~

~~**"Facilities"** means all the plant and equipment of a telecommunications service provider, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the regulated business of any telecommunications service provider.~~

"FCC" means the Federal Communications Commission.

"Federally Qualified Health Center ("FQHC")" means an entity which

(A) is receiving a grant under section 330 of the Public Health Service Act (PHS) [42 U.S.C. 254b], or is receiving funding from such a grant under a contract with the recipient of such a grant and meets the requirements to receive a grant under section 330 of such Act [42 U.S.C. 254b]; or

(B) based on the recommendation of the Health Resources and Services Administration within the Public Health Service, is determined by the Secretary of the Department of Health and Human Services ("HHS") to meet the requirements for receiving such a grant; or

(C) was treated by the Secretary, for purposes of part B of Section 330, as a comprehensive Federally funded health center as of January 1, 1990; or

(D) is an outpatient health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act [25 U.S.C. 450f et seq.] or by an urban Indian organization receiving funds under title V of the Indian Health Care Improvement Act [25 U.S.C. 1651 et seq.].

"Free of Charge" means 100% discount off the amount of the tariffed rate or charge, recurring and nonrecurring, directly attributable to the telecommunications line or wireless connection, used to provide the Special Universal Service. All applicable taxes and regulatory fees shall apply to the undiscounted rate or charge, but shall not be recoverable from the OUSF.

"High cost area" means an area where actual costs exceed Commission- or Legislatively-authorized rates for Primary Universal Services.

~~**"Hospital"** means a healthcare entity that has been granted a hospital license by the Oklahoma Department of Health for that particular location.~~

~~**"Incumbent local exchange telecommunications service provider"** or **"Incumbent local exchange carrier"** or **"ILEC"** means, with respect to an area or exchanges, any telecommunications service provider furnishing local exchange service in such area or exchanges within this state on July 1, 1995, pursuant to a certificate of convenience and necessity or grandfathered authority.~~

~~**"Internet"** means the international research-oriented network comprised of business, government, academic and other networks.~~

"Internet Subscriber Fee" means any fee that is paid to a telecommunications service provider for internet service that is in addition to the access connection charge.

"Lifeline Service Program" means the federal and state program designed to keep low-income subscribers on the telecommunications network.

~~**"Local exchange telecommunications service"** means a regulated switched or dedicated telecommunications service which originates and terminates within an exchange or an exchange service territory. Local exchange telecommunications service may be terminated by a telecommunications service provider other than the telecommunications service provider on whose network the call originated. The local exchange service territory defined in the originating provider's tariff shall determine whether the call is local exchange service.~~

"Local exchange telecommunications service provider" or "telecommunications service provider" or "TSP" means a company holding a certificate of convenience and necessity from the Commission to provide local exchange telecommunications service.

"Network" includes a telecommunications service provider's or telecommunication carrier's facilities used to originate and terminate traffic.

~~**"Not-for-profit hospital"** means:~~

~~(A) A hospital located in this state which has been licensed as a hospital at that location pursuant to Section 1-701 et seq. of Title 63 of the Oklahoma Statutes for the diagnosis, treatment, or care of patients in order to obtain medical care, surgical care or obstetrical care and which is established as exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C. Section 501(c)(3), or~~

~~(B) A hospital located in this state which is licensed as a hospital at that location pursuant to Section 1-701 et seq. of Title 63 of the Oklahoma Statutes and is owned by a municipality, county, public trust, or the state, that is primarily funded by county, state or federal support, for the diagnosis, treatment, or care of patients in order to obtain medical care, surgical care or obstetrical care.~~

~~**"Not-for-profit mental health and substance abuse facility"** means facilities operated by the Oklahoma Department of Mental Health and Substance Abuse Services ("ODMHSAS"), or certified by the ODMHSAS, as a Community Mental Health Center (OAC 450:17), Community Based Structure Crisis Center (OAC 450:23) or Community Comprehensive Addiction Recovery Center (OAC 450:24).~~

~~**"Oklahoma High Cost Fund" or "HCF"** means the fund established by the Commission in Cause Nos. PUD 950000117 and 950000119.~~

"Oklahoma Lifeline Fund" or "OLF" means the fund established and required to be implemented by the Commission pursuant to 17 O.S. § 139.105.

"Oklahoma Universal Services" means Primary Universal Service and Special Universal Services as defined herein.

~~**"Oklahoma Universal Service Fund" or "OUSF" or "Fund"** means the fund established and required to be implemented by the Commission pursuant to 17 O.S. § 139.106.~~

"OneNet" means statewide Internet and technology provider operated by the Oklahoma State Regents for Higher Education for the purpose of meeting the mission critical technology needs of Oklahoma's education, research, healthcare and public service communities.

~~**"Person"** means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character, or any other entity.~~

"Primary Universal Service" means an access line and dial tone provided to the premises of residential or business

customers which provides access to other lines for the transmission of two-way switched or dedicated communication in the local calling area without additional, usage-sensitive charges, including:

(A) A primary directory listing;

(B) Dual-tone multifrequency signaling;

(C) Access to operator services;

(D) Access to directory assistance services;

(E) Access to telecommunications relay services for the hearing impaired;

(F) Access to nine-one-one service where provided by a local governmental authority or multijurisdictional authority; and,

(G) Access to interexchange long distance services.

~~**"Public library"** means a library or library system that is freely open to all persons under identical conditions, and which is supported in whole or in part by public funds. Public Libraries shall not include libraries operated as part of any university, college, school museum, the Oklahoma Historical Society or county law libraries.~~

~~**"Public school"** means all free schools supported by public taxation, and shall include grades kindergarten through twelve.~~

"Public school building wherein classrooms are contained" means a building owned, leased or rented with public funds and accredited by the Oklahoma State Department of Education as a public school, which contains one or more classrooms utilized for student instruction for kindergarten through twelfth grade, and where internet access is utilized for student instruction.

~~**"Regulated telecommunications service"** means the offering of telecommunications for a fee directly to the public where the rates for such service are regulated by the Commission. Regulated telecommunications service does not include the provision of nontelecommunications services, including, but not limited to, the printing, distribution, or sale of advertising in telephone directories, maintenance of inside wire, customer premises equipment, and billing and collection service, nor does it include the provision of wireless telephone service, enhanced service, and other unregulated services, including services not under the jurisdiction of the Commission, and services determined by the Commission to be competitive.~~

"Reimbursement" means remuneration from the OUSF pursuant to OAC 165:59-3-60 for Primary Universal Services and OAC 165:59-7 for Special Universal Services. Reimbursement also means remuneration from the Oklahoma Lifeline Fund pursuant to OAC 165:59-9, for the Lifeline Service Program.

"Service territory" means a geographic area served by a telecommunications service provider.

"Special Universal Services" means:

(A) One incoming, toll-free phone number and up to a total of five access lines, provided free of charge to a not-for-profit hospital, public school building wherein classrooms are contained, public library, or county seat, in order to allow incoming, toll-free calls from any location within the geographic area of Oklahoma served by said entity.

(B) One access line, with the ability, to connect to an Internet service provider in accordance with 17 O.S. §139.109(C)(4), provided free of charge to a public school or a public library within the State, as set forth in 17 O.S. § 139.109 and Subchapter 7 herein.

(C) One telecommunications line or wireless connection, provided free of charge to an eligible healthcare entity within the State, sufficient for providing such telemedicine services as the healthcare entity is equipped to provide.

"State" means the State of Oklahoma.

"Tariff" means all or any part of the body of rates, tolls, charges, classifications, and terms and conditions of service relating to regulated services offered, the conditions under which such services are offered and the charges for services, which have been filed with the Commission and have become effective.

~~**"Telecommunications"** means the transmission, between or among points specified by the user, of voice or data information of the user's choosing, without change in the form or content of the information as sent and received.~~

"Telecommunications Act of 1996" means the Federal legislation cited as 47 U.S.C. Section 151 et. seq.

~~**"Telecommunications carrier"** means a person that provides telecommunications service in this state.~~

~~**"Telecommunications service"** means the offering of telecommunications for a fee.~~

"Telemedicine" means the practice of health care delivery, diagnosis, consultation, treatment, transfer of medical data, or exchange of medical education information by means of audio, video, or data communications. Telemedicine is not a consultation provided by telephone or facsimile machine, nor does it include administrative applications such as billing, contracted non-clinical services, or security systems.

"U.S.C." means United States Code.

"Universal service area" or "service area" means a geographic area established by the Commission for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, "service area" means such company's "study area" unless and until the FCC and the Commission, after taking into account recommendations of a Federal-State Joint Board instituted under 47 U.S.C. Section 410(c), establish a different definition of service area for such company.

"Unregulated services" means telecommunications services not regulated by the Commission.

~~**"Wire center"** means a geographic area normally served by a central office.~~

SUBCHAPTER 3. OKLAHOMA UNIVERSAL SERVICE FUND

PART 1. OKLAHOMA UNIVERSAL SERVICES

165:59-3-1. Oklahoma Universal Services

(a) Oklahoma Universal Services shall consist of Primary Universal Services and Special Universal Services.

(b) The Commission may, by rule, expand primary universal services to be supported by the OUSF after notice and hearing as provided in Section 139.106(J) of the Oklahoma Telecommunications Act.

PART 3. OKLAHOMA UNIVERSAL SERVICE FUND

165:59-3-10. Use of the Oklahoma Universal Service Fund

The Oklahoma Universal Service Fund is a state fund for demonstrated necessity or statutory entitlement. Funds from the Oklahoma Universal Service Fund may be sought as necessary to maintain rates for primary universal services that are reasonable and affordable, for special universal services, and for E911 and Technology Training Fund contributions, consistent with the Oklahoma Telecommunications Act.~~of 1997as follows:~~

~~(1) To reimburse eligible local exchange telecommunications service providers for the reasonable investments and expenses not recovered from the federal universal service fund or any other state or federal government fund incurred in providing universal services;~~

~~(2) Infrastructure expenditures or costs incurred in response to facility or service requirements established by a legislative, regulatory, or judicial authority or other governmental entity mandate;~~

~~(3) To reimburse eligible local exchange telecommunications service providers for providing the Special Universal Services as set forth in 17 O.S. Supp. 1997 § 139.109(C);~~

~~(4) To defray the costs of administering the OUSF, including the costs of an annual independent audit, if not performed by the Commission staff;~~

~~(5) To reimburse eligible local exchange telecommunications providers for assessed contributions to Oklahoma Telecommunications Technology Training Fund as set forth in OAC 165:59-3-14(h).~~

~~(6) For other purposes deemed necessary by the Commission to preserve and advance universal service.~~

165:59-3-11. How the Oklahoma Universal Service Fund shall be funded

The OUSF shall be funded ~~in a competitively neutral manner by a charge paid by all telecommunications carriers, providing regulated and unregulated services, at a level sufficient to maintain the availability of Oklahoma Universal Services and to provide for administration of the fund~~consistent with 17 O.S. §139.107.

PART 5. ADMINISTRATION OF THE OUSF

165:59-3-32. Audits of the Fund

(a) The OUSF ~~is subject to an annual audit by:~~

~~(1) An independent certified public accountantselected by the Commission or its designee; and/or,~~

~~(2) The Staff of the Public Utility Division; provided however, that the Staff of the Public Utility Division shall not conduct an annual audit for any year during which it also acted as the OUSF Administrator~~shall be audited annually by an independent auditor selected by the Administrator.

(b) The cost of the annual audit of the OUSF shall be funded by the OUSF.

165:59-3-34. Resolution of disputes regarding contributions to the OUSF and OLF

(a) Any telecommunications carrier ~~which contributes to the OUSF~~operating within Oklahoma may dispute the amount of contribution ~~it is required to pay into the OUSF~~assessed it by the Administrator for the OUSF and OLF, in the following manner:

(1) The telecommunications carrier shall ~~make~~submit a written ~~request to the Administrator or contracted agent of the OUSF~~notice setting forth its dispute in detail to the Administrator, on or before the payment due date, ~~setting forth its dispute~~ and the Administrator shall have the initial responsibility for trying to resolve the dispute.

(2) If satisfactory resolution is not achieved within thirty (30) days of the receipt of the written notice of dispute, the telecommunications carrier may file an application in the Commission's Court Clerk's Office requesting that the Commission resolve the dispute.

(b) Pending final resolution of a dispute, the disputing telecommunications carrier shall pay the disputed and undisputed amounts to the OUSF and OLF.

(c) If ~~a disputing contributor~~the disputing telecommunications carrier prevails in its protest of the required contribution, ~~the contributor~~the telecommunications carrier will be entitled to a refund, with interest, at the then effective interest rate, as provided by OAC 165:55-9-14(e)(1), ~~of any excess amount paid~~from the date the disputed charge was paid to the date of refund.

165:59-3-38. Violations

(a) Failure to pay an assessed contribution to the OUSF shall be deemed a violation of this Chapter.

(b) ~~If the Commission determines after notice and hearing that a telecommunications carrier has acted in violation of 17 O.S. § 139.107, in addition to the other enforcement powers of the Commission, including its contempt powers and authority to revoke a provider's certificate of convenience and necessity, the Commission may bring an action on behalf of the Oklahoma Lifeline Fund or the Oklahoma Universal Service Fund, in the district court that the Commission deems appropriate, to recover any unpaid fees and charges the Commission has determined are due and payable, including interest, administrative and adjudicative costs, and attorney fees. Upon collection of the charges and costs, the Administrator shall pay the~~

~~costs of the actions and deposit the remaining funds in the Oklahoma Lifeline Fund or the Oklahoma Universal Service Fund as appropriate.~~The Commission may use all authority it has pursuant to the Oklahoma Constitution and laws of this State to ensure compliance with the Oklahoma Telecommunications Act and this Chapter.

PART 7. CONTRIBUTIONS TO THE OUSF

165:59-3-40. Contributors to the OUSF

Every telecommunication carrier shall ~~contribute~~contribute/make payments, on a nondiscriminatory basis, into the OUSF.

165:59-3-42. Reporting requirements

Each ~~contributor subject to this Chapter~~telecommunications carrier shall, within thirty (30) days from the date of a request made for information ~~or a report, by~~necessary for the Administrator ~~or contracted agent, submit~~to perform its duties under the Oklahoma Telecommunications Act and this Chapter shall submit the requested information to the Administrator.~~or contracted agent a completed report form, based on a 12-month period identified by the Administrator or contracted agent, containing the telecommunications carrier's total retail billed Oklahoma intrastate telecommunications revenues from both regulated and unregulated telecommunications services~~ unless otherwise agreed between the Administrator and the telecommunications carrier.

165:59-3-44. Amount of contributions and charges assessed for the OUSF

(a) The amount of contribution required from each telecommunications carrier shall be ~~based on: total retail billed Oklahoma intrastate telecommunications revenues, from both regulated and unregulated telecommunications services, of the telecommunications carrier as a percentage of all telecommunications carriers' total retail billed intrastate telecommunications revenues, from both regulated and unregulated telecommunications services, for the 12-month period identified by the Administrator or contracted agent~~as provided in the Oklahoma Telecommunications Act.

(b) The Administrator ~~or contracted agent~~ shall, based on the amount to be contributed to the OUSF, calculate the contribution required to be made to the OUSF by each contributor, based on the fund level established by the Commission and the information provided pursuant to OAC 165:59-3-42.

(c) Each telecommunications carrier shall pay its contribution directly to the Administrator ~~or contracted agent~~as directed by the Administrator on a monthly, quarterly, or annual basis, at the carrier's option, at the beginning of the payment period(s) selected. The ~~check or other negotiable instrument~~payment shall be payable to the "OUSF." The invoice or other request for OUSF contributions shall be past due thirty (30) calendar days after the date on the invoice ~~or other request for OUSF contributions~~, unless otherwise agreed by the Administrator or as may be ordered by the Commission.

(d) Interest shall be charged on any payment not received by the past due date at the rate of 1.5% monthly.

(e) All contributions and interest payments made to the "OUSF" shall be deposited into the OUSF account by the Administrator or contracted agent.

165:59-3-46. Recovery of OUSF contributions

(a) A telecommunications carrier may, at its option, recover the amount ~~of its contributions to~~ it pays into the OUSF from its retail customers as provided in the Oklahoma Telecommunications Act. If the telecommunications carrier elects to recover the amount of its contributions from its retail customers, such recovery shall be made in a fair, equitable and nondiscriminatory manner.

(b) ~~Prior to recovering its OUSF contributions from its customers, a regulated telecommunications carrier shall file in the Commission Court Clerk's Office its proposed tariffs to recover, from its retail customer classes its OUSF contribution, in accordance with the rules and orders of the Commission. The filing shall include supporting documentation. The supporting documentation must include, documentation related to the payments made to OUSF, status of OUSF recovery from retail end-users from the preceding period, any proposed change(s), and any other supporting documentation requested by the Commission required for adequate evaluation. A copy of the proposed tariff and supporting documentation shall be delivered to the Attorney General contemporaneously with such filing. The telecommunications carrier's tariffs shall include a provision to ensure that any recovery from its retail customers shall be in a fair, equitable and nondiscriminatory manner, and that no over-recovery of contributions occurs.~~ Any over-recovery of the OUSF contributions for the preceding year shall be carried forward to the ensuing year, and shall be included as a reduction in the calculation of the retail end-user recovery amount for the ensuing twelve-month period of the telecommunications carrier's OUSF contributions; ~~or refunded in the event its reimbursements for that year are insufficient to offset such over-recovery~~recovery from its customers. Any under-recovery of the OUSF contribution for the preceding year, may ~~at the option of the carrier be recovered from the end-users within the following twelve months~~be included as an increase in the calculation of the retail end-user recovery amount for the ensuing twelve-month period of the telecommunication carrier's OUSF recovery from its customers, provided the telecommunications carrier made a reasonable attempt to collect the funds the preceding year.

(c) The Commission may, as it deems appropriate, order modifications in a regulated telecommunications carrier's method of recovery from its customers, after notice and hearing.

(d) In the event a telecommunications carrier elects to recover its OUSF contributions from its customers, the amounts of the recovery shall be explicitly stated as a line item on customer's bills.

PART 9. REQUESTS FOR OUSF FUNDING

165:59-3-60. Requests for funding from the OUSF

(a) Any eligible telecommunications service provider may request funding from the OUSF as necessary to maintain rates for primary universal services, at rates that are reasonable and affordable, and special universal services, and to provide for reasonably comparable services at affordable rates in rural areas as in urban areas.

(b) Should the OUSF at any time experience a shortfall, the costs associated with administering the fund will be paid first, followed by the payment due to the Attorney General pursuant to 17 O.S. § 139.103. Thereafter, any residual funds will be distributed to eligible OUSF recipients on a pro rata basis, pursuant to their approved requests. The balance of each approved request for OUSF funding will be paid at such time as additional funds become available.

(c) Each request for OUSF funding by an eligible ILEC serving less than seventy-five thousand (75,000) access lines shall be in accordance with the Oklahoma Telecommunications Act.~~premised upon the occurrence of one or more of the following:~~

~~(1) In the event of an FCC order, rule or policy, the effect of which is to decrease the federal universal service fund revenues of an eligible local exchange telecommunications service provider, the eligible local exchange telecommunications service provider shall recover the decreases in revenues from the OUSF;~~

~~(2) If, as a result of changes required by existing or future federal or state regulatory rules, orders, or policies or by federal or state law, an eligible local exchange telecommunications service provider experiences a reduction in revenues or an increase in costs, it shall recover the revenue reductions or cost increases from the OUSF, the recovered amounts being limited to the net reduction in revenues or cost increases; or,~~

~~(3) If, as a result of changes made as required by existing or future federal or state regulatory rules, orders, or policies or by federal or state law, an eligible local exchange telecommunications service provider experiences a reduction in costs, upon approval by the Commission, the provider shall reduce the level of OUSF funding it receives to a level sufficient to account for the reduction in costs.~~

~~(d) The receipt of OUSF funds for any of the changes referred to in subsection (c) of this Section shall not be conditioned upon any rate case or earnings investigation by the Commission. The Commission shall, pursuant to 17 O.S. § 139.106(d), approve therequest for payment or adjustment of payment from the OUSF based on a comparison of the total annual revenues received from the sources affected by the changes described herein by the requesting eligible local exchange telecommunications service provider during the most recent twelve (12) months preceding the request, and the reasonable calculation of total annual revenues or cost increases which will be experienced after the changes are implemented by the requesting eligible local exchange telecommunications service provider.~~

(~~e~~d) ~~Upon~~The Commission shall process any request for OUSF funding by an ILEC serving seventy-five thousand (75,000) or more access lines or a CLEC, ~~the Commission shall after notice and hearing make a determination of the level of OUSF funds, if any, that the provider is eligible to receive for the purposes contained in subsection (c) of this Section. If the Commission fails to make a determination within one hundred twenty (120) days of the filing of the request, the request for funding shall be deemed approved~~in accordance with the Oklahoma Telecommunications Act.

~~(f) Providers who are not prohibited from applying for OUSF funds as set forth in 17 O.S. § 139.109 shall receive funding from the OUSF without a hearing, for any special universal services provided and contributions made to the Oklahoma E911 Emergency Service Fund and the Oklahoma Telecommunications Technology Training Fund, pursuant to OAC 165:59-7-1.~~

~~(g) In areas where the Commission, after notice and hearing, designates a local exchange telecommunications service provider other than the incumbent, to be eligible for funding:~~

~~(1) The other local exchange telecommunications service provider may only receive funding for the portion of the facilities that it owns, maintains, and uses for regulated services,~~

~~(2) The other local exchange telecommunications service provider shall not receive OUSF funding at a level higher than the level of funding the incumbent local exchange telecommunications service provider is eligible to receive for the same area if the incumbent local exchange telecommunications service provider is also providing service in the same area; provided, the cost of any cost studies required to be performed shall be borne by the party requesting such studies, unless the party performing the study utilizes the study for its own benefit,~~

~~(h) For any area served by an incumbent local exchange telecommunications service provider which serves less than seventy-five thousand (75,000) access lines within the State, the other local exchange telecommunications service provider shall not receive OUSF funding at a level higher than the level of funding the incumbent local exchange telecommunications service provider is eligible to receive for the same area if the incumbent local exchange telecommunications service provider is also providing service in the same area and the other local exchange telecommunications service provider meets the requirements of paragraph (g)(1) of this Section and OAC 165:59-3-14.~~

~~(i) Should the Commission expand primary universal services in accordance with OAC 165:59-3-1(b), the Administrator or its contracted agent, upon approval of the Commission, shall determine the level of additional OUSF funding to be made available to an eligible local exchange telecommunications service provider.~~

165:59-3-61. Forms for requesting funding from the OUSF

The appropriate forms necessary for making ~~a~~an OUSF funding request shall be available on the Commission's

website and may be obtained from the ~~Public Utility Division~~Administrator.

165:59-3-62. Procedures for requesting funding from the OUSF

(a) An eligible local exchange telecommunications ~~carrier~~service provider or provider of Special Universal Services requesting funds from the OUSF shall file a "Request for OUSF Funding" with the Commission Court Clerk's Office. On the date of filing the Request for OUSF Funding, the eligible telecommunications carrier or provider of Special Universal Services shall deliver a filed copy of the Request to the Administrator for processing. To facilitate the timely evaluation of requests for funding from the OUSF, a Request for OUSF Funding shall not contain a request for funding Special Universal Services to more than one Eligible Healthcare Entity or more than one School District or more than one Library system. The filing of the Request for OUSF Funding shall start the 90 day review period established by 17 O.S. §139.106(D) unless otherwise agreed to by the requesting provider.

(b) Applications found to be incomplete (missing information required by the form and instruction package contained on the Commission website) may be denied.

(~~b~~c) It is the intention of the Commission that each funding request will be reviewed on a case-by-case basis. Part 9 of Subchapter 3 does not purport to predetermine the merits of any funding request. The eligible ~~local exchange~~ telecommunications service provider requesting OUSF funding for primary universal service shall make every reasonable and timely effort to obtain funding from alternative funding sources designated to support universal service, and shall submit all documentation of the effort to obtain funding from alternative funding sources designated to support universal service as a part of its Request for OUSF funding set forth in subsection (a), or an explanation for why alternative funding is not available. Upon the company providing the documentation that it has sought alternative funding sources or an explanation for why alternative funding is not available, the company shall not be precluded from having its application processed.

(~~c~~d) If ~~an eligible local exchange telecommunications service~~a provider receives funding from alternative funding sources for an investment or expense already reimbursed by the OUSF, the ~~company shall reducethe amount of any~~provider shall refund the double collection to the OUSF by either reducing a prospective funding request from the OUSF by an equivalent amount or remitting cash payment to the OUSF. Under no circumstances will double recovery be allowed.

(~~d~~e) Concurrent with the filing of the Request for OUSF Funding, the eligible telecommunications carrier who is requesting funding from the OUSF shall provide copies of its Request for OUSF Funding and notice of the Request for OUSF Funding, to the Director of the Public Utility Division, ~~and~~ to the Attorney General and to the school/library/telemedicine entity. In addition, the eligible telecommunications carrier, which is requesting funding shall provide notice of the Request for OUSF Funding to the contributors to the OUSF. The notice requirement to each telecommunications carrier in the State of Oklahoma which is a contributor to the OUSF, shall be accomplished by providing an electronic copy of such notification to the Fund Administrator on the date the eligible telecommunications provider files its Request for OUSF Funding at the Commission's Court Clerk's office for posting on the OCC website. The OUSF Administrator will then place the notification on the OCC website within five (5) business days. The Administrator shall provide a list of the contributors to the OUSF, upon request by an eligible telecommunications carrier. The notice shall identify whether the request is for Lifeline support, Primary Universal ~~Serviced~~Service support or Special Universal Service support. The notice and Request for OUSF Funding shall also include the dollar amount requested for ~~both~~ the lump sum and any recurring amounts, as well as the name and address of the ~~school, library, or eligible healthcare entity~~school/library/telemedicine entity for which ~~reimbursement of OUSF credits are~~OUSF funding is sought in the Application.

(~~e~~f) An eligible telecommunications carrier or provider of Special Universal Services shall submit to the Administrator or file with its Request for OUSF Funding a copy of its tariffed rate for the data speed set forth in 17 O.S. § 139.109(C)(4) or its equivalent. If the eligible carrier or provider does not have a tariffed rate for the data speed set forth in 17 O.S. § 139.109(C)(4), then the eligible carrier or provider shall provide a copy of its Individual Case Basis pricing or a document that describes the rates being charged. The eligible carrier or provider shall also provide a diagram showing the configuration identifying components and charges.

(~~f~~g) Within ninety (90) days after receipt of the completed Request for OUSF Funding, the Administrator shall review, determine the accuracy of the request, and advise the provider requesting the OUSF funds of the determination of eligibility. Simultaneously with the Administrator or contracted agent advising the provider, the Administrator or contracted agent shall provide the written determination to the Commission and post it to the Commission's website. The carrier shall provide a copy of the Administrator's Determination to the school/library/telemedicine entity within five (5) days after it is filed.

(~~g~~h) Any adversely affected party shall have fifteen (15) days to file a request for reconsideration by the Commission of the Determination made by the Administrator. Upon filing a request for reconsideration, ~~the matter will be set for hearing.~~the party requesting reconsideration shall file a Request for Procedural Schedule with the Request for Reconsideration that sets the Request for Reconsideration before an Administrative Law Judge.

(~~h~~i) The Commission will, within thirty (30) days from the request for reconsideration, issue an order on the Request for OUSF Funding after reviewing the Administrator's or contracted agent's Determination regarding the Request for OUSF Funding and any request for reconsideration. The ~~Commission~~party requesting reconsideration shall give notice to the provider making the Request for OUSF Funding, the Attorney General, the Administrator or contracted agent, the school/library/telemedicine entity on whose behalf which funding is requested and all parties ~~requesting reconsideration~~ of the time and place for hearing.

(~~i~~j) If no request for reconsideration of the Administrator's Determination is filed, an order will be issued by the Commission approving the request without further notice and/or hearing.

(~~j~~k) If a Request for Reconsideration is filed and the Commission does not issue an order within the time frames set forth in this Section, the request shall be deemed approved, on an interim basis, subject to refund, with interest at a rate determined by the Commission. Any refund shall include interest at a rate of not more than the interest rate established by the Commission on customer deposits and shall accrue for a period not to exceed ninety (90) days from the date the funds were received by the requesting eligible provider.

(~~k~~l) The ~~Administrator or contracted agent~~Commission shall ensure that all OUSF funds have been received and are on deposit in a sufficient manner so as to pay requests for OUSF funding for primary Universal Services as ordered by the Commission, or as may be deemed approved in accordance with State law. The Administrator or contracted agent shall ~~provide~~authorize payment of the approved funding to the requesting ~~eligible local exchange telecommunications service provider~~Incumbent Local Exchange Carrier, OneNet, or company that has a Certificate of Convenience and Necessity, after issuance of a Commission order approving payment or the request is deemed approved, whichever occurs sooner.

(~~l~~m) Any Request for OUSF Funding may be returned to the requesting party and deemed denied if the appropriate forms are not used or said forms are not completed in a satisfactory manner. The appropriate forms and applicable instructions may be obtained from the ~~Public Utility Division of the Commission~~Administrator or the Commission's website.

(~~m~~n) Unless good cause is shown, any request for OUSF funding should be made within eighteen (18) months from the date the requesting telecommunications carrier can determine the impact of occurrence of the circumstance giving rise to the request.

(~~n~~o) An eligible telecommunications carrier or provider shall receive future reimbursement upon submission of properly submitted ~~true-ups~~true-ups to the Fund Administrator or contracted agent, and upon request, provide copies of invoices submitted to the customer or subscriber showing~~, as required by OAC 165:59-7-17, the~~a credit equivalent to the reimbursement ~~to be~~which has been received by the provider from the OUSF.

(~~o~~p) An eligible telecommunications carrier or provider shall submit changes to the monthly recurring support based on ~~e-rate~~ discount adjustments ~~and/or changes to the OUSF assessment factor~~received from alternative funding sources designated to support universal service such as E-Rate and the FCC's rural health care programs, to the Fund Administrator or contracted agent via the monthly ~~or quarterly~~ true-up reports, for processing. Any ongoing monthly recurring charges will be adjusted as necessary based on the appropriate ~~e-rate~~ discount approved by the Universal Service Administrative Company ~~and/or any change in the OUSF assessment factor~~.

(~~p~~q) An eligible telecommunications carrier or provider shall notify the Fund Administrator or contracted agent in writing, of any changes to the provisioning of service, including but not limited to disconnection of service, upgrade and/or downgrade in connectivity speed, and adding or removing eligible buildings. Any increase to the number of entities will require approval from the Fund Administrator or contract agent in order to determine if a new application will be required and a new Commission Order issued to approve reimbursement. The Administrator shall advise the provider of its determination within thirty (30) days of receipt of the written notice provided by the provider. If the Administrator fails to advise the provider of its determination within the thirty (30) day period the OUSF funding being received by the provider will not change until a new request for OUSF funding is processed in accordance with the Oklahoma Telecommunications Act and this Chapter.

(~~q~~r) ~~**Preapproval.**~~ An eligible telecommunications carrier or provider of Special Universal Services requesting funds from the OUSF may request preapproval of a Request for OUSF Funding.

(1) ~~An eligible telecommunications carrier or provider of Special Universal Services requesting funds from the OUSF may request preapproval of a Request for OUSF Funding for an entity for which eligibility is uncertain.~~ A request for preapproval shall follow the procedures outlined in OAC 165:59-3-62 (a)-~~(p)~~(q). The purpose of such a preapproval request is to provide greater certainty to providers of Special Universal Services and the eligible institutions that rely on those services. No OUSF funds shall be dispersed to an eligible telecommunications carrier or provider of Special Universal Services until the services are installed and in service. The amount of OUSF funding preapproved under this subsection shall be subject to adjustments based on the amount of support received from other sources, if any, as well as adjustments to pricing that may occur between the time of preapproval and installation of service. Additional services or buildings that are installed beyond those contained in the pre-approved application shall require an additional application to be filed.

(2) Upon receipt of an application under this paragraph, the Administrator shall process the application in the manner outlined in 165:59-3-62 (e)-~~(i)~~(j). If the Administrator recommends that preapproval be granted, the Commission may enter an Interim Order regarding the specific request for which preapproval is sought. After the services are installed and in service, the provider of Special Universal Services shall provide documentation regarding the installation and charge for the services, after which time the Commission may enter a final order in the cause approving disbursement of OUSF funds if there are no material differences between the services for which pre-approval was granted and the services that were installed.

(3) This paragraph is intended to supplement and not supplant the current application process, and eligible telecommunication ~~carrier~~carriers and providers of Special Universal Services shall still submit requests for funding from OUSF in the manner provided in OAC 165:59-3-62 (a)-~~(p)~~(q).

~~(r) **Portability.** An eligible entity that has been approved to receive support for Special Universal Services and chooses to change providers may continue to receive Special Universal Service support, without requiring a new application to be filed if the following conditions are met:~~

~~(1) The support for which services are sought is for the same services at the same or lower rates;~~

~~(2) Written notification is submitted to the Administrator which includes the following:~~

~~(A) The entity name;~~

~~(B) The current provider;~~

~~(C) The new provider;~~

~~(D) The services being provided;~~

~~(E) The current and new prices for the services provided;~~

~~(F) Proposed date of installation of service by new provider; and~~

~~(G) Disconnection date of reimbursable services by the old provider.~~

~~(3) Within forty-five (45) days after receipt of a completed Request for OUSF Funding under this subsection, the Administrator shall review, determine the accuracy of the request, and provide a written determination of eligibility to the Commission. The Commission shall then issue an order approving the request.~~

~~(4) If the eligible entity is seeking to upgrade or add services, the entity will continue to receive support for the previously approved services at the same or lower rates; and any additional requests for support for Special Universal Services shall require an application to be filed pursuant to OAC 165:59-3-62.~~

~~(5) In the event a provider receives any funds in error under this section, the provider shall promptly notify the Administrator and return such funds to the Administrator within 60 days of the discovery of the erroneous payment. If the provider fails to return such funds within 60 days of the discovery of the erroneous payment, the repayment shall be subject to interest at the highest rates allowed under Oklahoma law beginning on the 61st day and continuing until such time as the proper funds plus applicable interest are paid in full.~~

SUBCHAPTER 7. SPECIAL UNIVERSAL SERVICES

165:59-7-1. Reimbursement from the OUSF for Special Universal Service

(a) A provider of Special Universal Services may be eligible to receive funding from both the OUSF and other state or federal funds; however, in no instance will there be a double recovery. If the provider of Special Universal Services receives funding from another state or federal fund for an investment or expense already reimbursed by the OUSF, the provider shall reduce the amount of its prospective funding from the OUSF by an equivalent amount. The ~~recipient~~provider of Special Universal Services shall work with the recipient to make every reasonable effort to obtain funding from another state and/or federal fund designated to support special universal service; however, such efforts shall not delay or affect the provider's ability to receive funding from the OUSF pursuant to the provisions of this Chapter and the Oklahoma Telecommunications Act ~~of 1997~~. ~~Recipients~~The provider shall provide the Commission with information regarding the recipient's request for funding from government sources designed to support the provisioning of ~~telemedicine~~the Special Universal Service, i.e. the federal schools and libraries program or federal rural health care program, or an explanation why such funding is not available or why the recipient of the Special Universal Service did not request such funding. Failure to provide such documentation regarding ~~telemedicine~~Special Universal Service may result in the Commission denying the request for ~~telemedicine~~Special Universal Service funding from the OUSF.

(b) A provider of the free-of-charge telecommunications services identified in this Chapter and 17 O.S. § 139.109 as Special Universal Services, shall be reimbursed from the OUSF for the provisioning of said Special Universal Services, if requested.

(c) A provider of Special Universal Services seeking reimbursement from the OUSF for the tariffed rate or charge for any Special Universal Service provided must make its request for reimbursement pursuant to OAC 165:59-3-62, in the same manner that an eligible telecommunications carrier requests funds from the OUSF for purposes other than the provisioning of Special Universal Services. The requesting provider shall submit information with its Request for OUSF Funding that identifies where and to whom the services ~~are~~were provided, along with documentation supporting the requested level of funding. The information shall include the applicable tariffed rate or charges for providing the services.

(d) Upon receipt of a Request for OUSF Funding, the Administrator of the OUSF or the contracted agent shall review the Request and, if appropriate, reimburse the provider of the Special Universal Services, consistent with the Oklahoma Telecommunications Act ~~of 1997~~.

(e) The Commission will utilize the following procedures when evaluating a request for OUSF funding for internet access to a public school or public library:

(1) Competitive bidding should be used for all services where OUSF funding will be sought, including costs for internet access to schools and libraries for the balance not paid by E-Rate, up to the eligible 1.5 Mbps building credit equivalent.

(2) An affidavit will be required from the public school or public library that the bid information submitted to the Administrator for review contains all the bids received by the school or library.

(3) The OUSF will not reimburse charges for redundant service(s).

(4) The provider of the LAN/WAN will be given 30 days notice prior to their reimbursement being reduced due to the funding going to the internet access provider first, unless the reduction in funding is caused by an increase in the rate of the LAN/WAN provider.

(5) Funding from the OUSF will be provided to the incumbent carrier until the date of disconnection or thirty (30) days after the end-user provides the notice to disconnect to the incumbent carrier; whichever occurs first.

(6) In instances where the provider has not filed or submitted a 1.5-Mbps tariff to the Commission, the OUSF will calculate the 1.5-Mbps building credit using the amount established for a 1.5-Mbps credit by Commission Order.

(7) For applications that include funding for the internet access and for LAN/WAN systems, the OUSF will reimburse distance sensitive mileage for the internet access for the "first building" credit when the carrier's tariff has a mileage sensitive component. Each subsequent building credit will not include distance sensitive mileage.

(8) For applications that include funding for LAN/WAN only, the OUSF will not fund distance sensitive mileage in any building credit unless more than one Central Office is involved to provision internet access. In the latter case, distance sensitive mileage will be allowed for only one (1) building credit per central office.

(9) In the event a school uses multiple service providers for the Internet and LAN/WAN connection, available building credits will be utilized to first fund the Internet service provider, and then the LAN/WAN service provider will be funded based upon remaining available building credits.

(10) The OUSF will fund reasonable installation charges. Installation charges may be amortized over a reasonable period of time to avoid excessive switching, reduced quality of service and excessive burden on the OUSF caused by untimely carrier changes.

(11) The OUSF will not reimburse monthly fees or hardware related to optional services, such as managed routers. The OUSF may pay a one-time cost for the installation charge associated with configuring the router.

(12) One (1) building credit is available for each building which contains classrooms wherein students in prekindergarten through twelfth grades receive internet based coursework. Buildings with a physical firewall would qualify for a building credit for each section of the building that is separated by a physical functional firewall.

(13) A building that is the point of service, but which fails to otherwise qualify as a public school building in which classrooms are contained, does not qualify as a building for the purpose of calculating building credits.

(14) Building credits will only be allowed for buildings with classrooms that have active student instructional/testing internet sessions or use the building for state mandated testing that uses internet access. In instances where the internet usage is limited to student testing, the school must demonstrate that alternative locations or methods for testing are not available.

(15) The OUSF will not fund internet access to a building for more than 60 days during the construction phase or any remodeling/out-of-service timeframes that occur over an extended period.

(16) Once an Order regarding OUSF reimbursement has been issued, the Telecommunications Carrier should submit true-up reports to the OUSF manager on a monthly basis. Payment will be limited to ninety (90) days of true-up; other than for the initial true-up filed after the final Order is issued. After the initial true-up request, a new application must be filed to recover any true-up amount that exceeds ninety (90) days of service, unless otherwise agreed to by the Administrator.

(17) True-up reports must be received in the form and content prescribed by the OUSF Administrator.

(18) The Administrator will post to the Commission website a copy of the monthly payout true-up report; within five (5) days of the payout true-up report being approved by the OUSF Administrator.

(19) True-up monthly recurring amounts or other funding related changes (i.e. number of buildings or level of bandwidth) will not be increased from the ordered amount without supporting documentation being made available to the OUSF Administrator.

(20) Increases in cost caused by the expiration of a contract will not be permitted via true-up when the new cost is higher than 10% of the expired contract and when there is no new contract in place. A new application will need to be filed in the Court Clerk's office to recover any difference in prices that exceed 10% of the expired contract price.

(21) Any additional service above and beyond the internet access line on contracts and invoices will be denied, unless good cause is shown for reasonable pricing and public interest. Invoices provided to request recovery from the OUSF must contain a breakdown of non-eligible expenses, such as additional internet maintenance service, Quality of Service product, firewall, email packages, domain registration, etc.

(f) The Commission will utilize the following procedures when evaluating a request for OUSF funding for a telemedicine line:

(1) Competitive bidding should be used for all services where OUSF funding will be sought.

(2) An affidavit will be required from the telemedicine entity that the bid information submitted to the Administrator for review contains all the bids received by the telemedicine entity.

(3) The OUSF will not reimburse charges for redundant service(s).

(4) Funding from the OUSF will be provided to the incumbent carrier until the date of disconnection or thirty (30) days after the end-user provides the notice to disconnect to the incumbent carrier; whichever occurs first.

(5) The OUSF will fund reasonable installation charges. Installation charges may be amortized over a reasonable period of time to avoid excessive switching, reduced quality of service and excessive burden on the OUSF caused by untimely carrier changes.

(6) The OUSF will not reimburse monthly fees or hardware related to optional services, such as managed routers or maintenance.

(7) Once an Order regarding OUSF reimbursement has been issued, the Telecommunications Carrier should submit true-up reports to the OUSF manager on a monthly basis. Payment will be limited to ninety (90) days of true-up; other than for the initial true-up filed after the final Order is issued. After the initial true-up request, a new application must be filed to recover any true-up amount that exceeds ninety (90) days of service, unless otherwise agreed to by the Administrator.

(8) True-up reports must be received in the form and content prescribed by the OUSF Administrator.

(9) The Administrator will post to the Commission website a copy of the monthly payout true-up report; within five (5) days of the payout true-up report being approved by the OUSF Administrator.

(10) Changes to the funding level may not be done by true-up unless expressly authorized by the OUSF Administrator after review of changes to the bandwidth needs of the eligible healthcare entity. True-up monthly recurring amounts or other funding related changes (i.e. level of bandwidth) will not be increased from the ordered amount without supporting documentation being made available to the OUSF Administrator.

(11) Increases in cost caused by the expiration of a contract will not be permitted via true-up when the new cost is higher than 10% of the expired contract and when there is no new contract in place. A new application will need to be filed in the Court Clerk's office to recover any difference in prices caused by an expired contract.

(12) Any additional service above and beyond the telemedicine line on contracts and invoices will be denied, unless good cause is shown for reasonable pricing and public interest. Invoices provided to request recovery from the OUSF must contain a breakdown of non-eligible expenses, such as Quality of Service product, firewall, email packages, domain registration, etc.

165:59-7-6. Telemedicine access for eligible healthcare entities

(a) It is the intention of the Commission that this Chapter be interpreted to assist in the development of telemedicine programs which in turn have the following effects on eligible health care entities:

(1) Empowering eligible healthcare entities, especially those in rural areas, to provide a higher level of medical service;

(2) Expanding the range of medical services available, especially those in rural areas;

(3) Providing greater access to more choices in medical care by patients in rural areas;

(4) Reducing the number of rural patient transfers to urban areas;

(5) Enhancing rural economic development; and

(6) Reducing the costs of medical care at eligible healthcare entities.

(b) Upon receipt of a written request by an authorized representative of an eligible healthcare entity, as defined by this Chapter, the telecommunications carrier or OneNet shall, by itself or in conjunction with another provider of telecommunications services, provide one telecommunications line or wireless connection, free of charge, sufficient for providing such telemedicine, clinical, and health consultation services as the entity is equipped to provide as set forth in 17 O.S. § 139.109(C)(2).

(c) The telecommunications carrier shall be entitled to reimbursement from the OUSF for the recurring amount of the tariff rate or charge directly attributable to the telecommunications line or wireless connection.

(d) In no case, however, shall reimbursement from the OUSF be made for an Internet subscriber fee or charges incurred as a result of services accessed via the Internet.

(e) The telecommunications carrier shall be entitled to reimbursement from the OUSF for a one-time reasonable charge for the establishment of service of a new telecommunications line or wireless connection. ~~Reimbursement under~~Under this subsection (e) reimbursement is intended to allow for reasonable changes in 1) the telecommunications services and technologies purchased by an eligible healthcare entity, 2) the physical location of an eligible healthcare entity by permitting establishment of new service at a new location, and 3) the telecommunications carrier providing service to an eligible healthcare entity.

(f) The written request by an authorized representative of an eligible healthcare entity to a telecommunications carrier or OneNet shall be in the form and content approved by the Director of the Public Utility Division.

(g) ~~If available, the eligible healthcare entity shall select an Internet provider that is accessible via a non-toll call, in order to minimize the toll charges that may be recoverable from the OUSF. If no non-toll provider is available, the eligible healthcare entity may seek a waiver letter from the Director of the Public Utility Division in order to select an Internet provider that is accessible via a toll call.~~

~~(h)~~ No later than February 1, each eligible healthcare entity that receives OUSF telemedicine funding shall, annually recertify for the purpose of determining their continued eligibility. The annual recertification shall be in the form and content approved by the Director of the Public Utility Division. If the healthcare entity is not recertified for the current level of funding, then funding will be adjusted or cease as of July 1 of the same calendar year unless determined otherwise by the Commission; except that in 2013 funding shall be adjusted or cea e December 31, 2013, unless determined otherwise by the Commission.

(~~i~~h) No later than May 1, the Public Utility Division shall mail a letter to each eligible healthcare entity and its telecommunications service provider, to inform of the Public Utility Division's determination regarding recertification. If either the eligible healthcare entity or the telecommunications service provider disputes the determination of eligibility or bandwidth to be funded by the OUSF after July 1 of that year (December 31, in 2013 only), they may file an application in the Court Clerk's office to request reconsideration by the Commission.

(i) Effective July 1, 2016, eligible healthcare entities that are eligible for funding from a federal healthcare program are

expected to not only request funding, but are expected to follow through and complete the process for federal funding. The telecommunications carrier that provides the Special Universal Service to an eligible healthcare entity that is eligible for federal funding shall provide the Form 463 and/or Form 467 filed by the eligible healthcare to PUD, within thirty (30) days after the eligible healthcare entity has submitted the form to the Universal Service Administrative Corporation.

165:59-7-8. Internet access to public schools and libraries

(a) It is the intention of the Commission that this Chapter be interpreted to maximize the availability of Internet access to all public schools and public libraries within Oklahoma, so that children within Oklahoma will be able to utilize the Internet to enhance their learning opportunities, thereby better preparing them for the future.

(b) Upon receipt of a written request by a public school or a public library, the telecommunications carrier or OneNet shall, by itself or in conjunction with another provider of Special Universal Services, provide each public school building wherein classrooms are contained and each public library in the state one access line, free of charge, with the ability to connect toll-free to an Internet service provider at 1.5 Mbps as set forth in 17 O.S. § 139.109 (C)(4), in the most economically efficient manner for the carrier, or an equivalent dollar credit to be applied by the public school or public library toward similar services ~~provided by the same carrier~~, including services ~~that~~arerequired to link locations prior to accessing ~~an Internet provider~~a service provider.

(c) ~~If available, the public school or public library shall select an Internet provider that is accessible via a non-toll call, in order to minimize the toll charges that may be recoverable from the OUSF. If no non-toll provider is available, the public school or public library may seek a waiver letter from the Director of the Public Utility Division in order to select an Internet provider that is accessible via a toll call.~~

~~(d)~~ The written request by a public school or public library shall be in the form and content approved by the Director of the Public Utility Division and for a public school shall include an affidavit from the school regarding the number of buildings and a description thereof, for which a building credit is requested. The public school shall also provide a statement explaining the service requested for reimbursement and an affidavit that the service is needed to achieve the educational needs of the school's students.

(~~e~~d) In no case will the OUSF reimburse an entity for an Internet subscriber fee or charges incurred as a result of services accessed via the Internet.

(~~f~~e) The provider of the Internet access component of Special Universal Service shall receive reimbursement from the OUSF in the amount of the tariffed rate or charges directly attributable to the provisioning of the toll-free access line capable of connecting with an Internet service provider as set forth in 17 O.S. § 139.109 (C)(4) and Subchapter 7, and the associated usage, and all access or other charges paid by the provider of the Special Universal Service.

165:59-7-10. Other sources of funds

Recipients of funds for Special Universal Services should make every reasonable effort to seek other sources of funding from state or federal funds, to minimize the impact on the Oklahoma Universal Service Fund. This includes completing the application process and requesting disbursement of funds from the federal fund administrator when funding is approved.

165:59-7-17. Disclosure on bill regarding provided Special Universal Services

(a) Each provider of Special Universal Services, which may be either a telecommunications carrier or OneNet, shall render a bill to the eligible healthcare entity, public school, public library, or county seat government regarding said Special Universal Services. The bill shall reflect the provider's tariffed rate or charge for the provided toll-free telephone number, access lines, usage and any other costs incurred by the provider in conjunction with the provision of the Special Universal Services. ~~The bill should also separately reflect a credit equivalent to the reimbursement to be received by the provider from the Oklahoma Universal Service Fund. Such credits shall be made to the entities before requesting any associated disbursement from the OUSF.~~

(b) Prior to signing a contract with a school, library or recipient of a telemedicine line, the provider shall provide to said school, library or recipient of a telemedicine line, written information regarding the limitations on funding from the OUSF. The content of the written information to be provided shall be posted on the Commission's website.

SUBCHAPTER 9. OKLAHOMA LIFELINE FUND

PART 1. LIFELINE SERVICE PROGRAM

165:59-9-1. Purpose of Oklahoma Lifeline Fund

(a) This Subchapter establishes guidelines for the administration of the Oklahoma Lifeline Fund ("OLF"), that are consistent with 17 O.S. §§ 139.105 and 139.107 ~~and 47 C.F.R. § 69.104 (k)(1)~~.

(b) The Oklahoma Lifeline Fund is designed to advance the goals of universal service and ensure that low-income residential customers within the State of Oklahoma, who meet the criteria of ~~47 C.F.R. § 69.104 (k)(1),~~ 17 O.S. § 139.105, and 47 CFR §§ 54.400 through 54.415, are provided financial assistance in maintaining basic local exchange telecommunications service.

(c) The Oklahoma Lifeline Fund is a state fund administered by the Oklahoma Corporation Commission, for the purpose of funding the Lifeline Service Program, as set forth in Section 165:59-9-3.

165:59-9-3. Oklahoma Lifeline Service Program

(a) The Oklahoma Lifeline Service Program is a program designed to operate in conjunction with the Federal Lifeline program, to provide ~~full waiver of the End-User Common Line~~

~~Charge and~~ a monthly credit to the monthly bill of qualifying residential subscribers for basic local exchange service, in an amount equal to ~~the End-User Common Line Charge, or~~ such ~~other~~ amount as may be established by the Commission, after notice and hearing or by 17 O.S. §139.105.

(b) In order to qualify for the Lifeline Service Program, a customer must meet the requirements of 47 CFR §§ 54.400 through 54.415 and show that they:

(1) Participate in or receive assistance or benefits, as certified by the Department of Human Services, under a program providing:

(A) Temporary Assistance to Needy Families,

(B) Supplemental Nutrition Assistance Program (SNAP) f/k/a Food Stamps, or Food Distribution Program on Indian Reservations, (FDPIR),

(C) Medical Assistance and/or Medicaid, or

(D) Supplemental Security Income;

(2) Participate in Federal Public Housing Assistance

(3) Participate in Low Income Home Energy Assistance Programs

(4) Participate in or receive assistance or benefits, as certified by the State Department of Rehabilitation Services, under a program providing vocational rehabilitation, including aid to the hearing impaired; or,

(5) Participate in or receive assistance or benefits, as certified by the Oklahoma Tax Commission, pursuant to the Sales Tax Relief Act, 68 O.S. § 5011 et seq.

(6) Beginning October 1, 2000, eligibility has been expanded to permit low-income individuals living on ~~tribal~~Tribal lands to establish their income eligibility by certifying participation in one of the following Federal Assistance Programs:

(A) Bureau of Indian Affairs General Assistance,

(B) Tribally Administered Temporary Assistance for Needy Families (TANF),

(C) Head Start Programs (under income qualifying eligibility provision only),

(D) National School Lunch Program (free lunch program only)

(c) Each eligible telecommunications carrier shall file tariffs implementing a Lifeline Service Program that is consistent with this Subchapter.

(d) Lifeline Assistance shall not be available on a retroactive basis to the customers.

(e) Upon notification to the eligible telecommunications carrier, the credit will be discontinued for customers who no longer qualify for Lifeline Assistance.

(f) Lifeline Service benefits are applicable only to the primary line at the customer's principal residence. An applicant for Lifeline Service may report only one address in the state as the principal place of residence.

(g) As a participant in Lifeline Assistance, customers will be eligible to receive Toll Restriction Service at no charge.

(h) Each telecommunications service provider with approved Lifeline Service tariffs shall advertise the availability of the Lifeline Service Program within its exchange(s) or service territory on, at a minimum, an annual basis.

(i) The wireless ETC must provide access to its own customer service department by dialing 611 from the wireless handset or have a toll free number for contacting the ETC programmed in the phone and clearly identified.

(j) All enrollment in any Lifeline Services from any outdoor mobile location shall be governed by OAC 165:55-23-16.~~is prohibited unless the following conditions are met:~~

~~(1) There are at least two banners identifying the name of the ETC, in print that is readable from at least 30 feet away;~~

~~(2) The banners are at least 3 foot by 5 foot in size and the identification of the ETC takes up at least 50 percent of the banner;~~

~~(3) Employees must wear a shirt that has the name of the ETC on it permanently affixed to the shirt;~~

~~(4) The available terms, conditions and rates for the Lifeline product(s) must be prominently posted at the location where the marketing is taking place;~~

~~(5) The marketer must have permission from either the owner of the property where the marketing is taking place or from the individual responsible for the property;~~

~~(6) The marketer must have all required city and county licenses necessary for selling a service at that location;~~

~~(7) The marketing must be done in a manner that it does not create a traffic hazard or distraction;~~

~~(8) Marketing may only be done from a tent of at least 10 foot x 10 foot in size or from an enclosed trailer or panel truck that has the name of the ETC permanently affixed on the truck or trailer in letters that are at least 18 inches in height;~~

~~(9) The ETC must provide PUD a list of locations by email where mobile marketing is taking place, including the date, time and location, at least two weeks prior to the mobile marketing taking place or maintain an active phone number the Commission can call or a web site the public can view, that identifies all mobile marketing locations and times for at least the following three days;~~

~~(10) The ETC has obtained a waiver from the Director of the Public Utility Division regarding a specific requirement of this paragraph.~~

(k) Any wireless handset provided in conjunction with the Lifeline Service must clearly and permanently identify the provider of the service.

(l) An ETC may not provide Lifeline Service purely by resale without a Commission order.

(m) An approved Lifeline tariff may not be modified without submitting the modification to the Director of the Public Utility Division at least ~~15~~fifteen (15) days prior to the effective date of the proposed change for the purpose of receiving a determination whether the modification is in the public interest. Unless the ETC receives written notification that its modification is NOT IN THE PUBLIC INTEREST within ~~15~~fifteen (15) days after its submission, the submission is deemed to be in the public interest and may be implemented.

(n) The ETC shall utilize a third party verification system that has been approved by the Director of PUD to verify the customer's identity and address, or obtain a waiver from the Director of the Public Utility Division from this requirement.

(o) The ETC must retain a copy of the signed application for Lifeline Service, and any recertification information for five (5) years.
(p) The ETC shall maintain a database sufficient to identify any duplicates among all companies associated with the ETC.
(q) Unless otherwise approved by Commission Order, any Lifeline plan on Tribal Land must include a minimum of 1000 minutes of local voice use or unlimited domestic calling, to be considered in the public interest. Any Lifeline plan on non-Tribal Land must include a minimum of 500 minutes of local voice use to be considered in the public interest.
(r) All marketing efforts must clearly identify the ETC actually providing the Lifeline Service.
(s) In addition to other remedies available to the Commission, violations of the marketing rules may result in a minimum of a ~~30~~thirty (30) days suspension of an ETC's ability to sign up new customers and/or a fine as authorized by 17 O.S. §139.105 after notice and hearing.
(t) The eligible telecommunications carrier seeking reimbursement from the Oklahoma OUSF for the provisioning of Lifeline services shall also note on the certified written statement obtained from the customer the name of the employee or representative who verified the customer's eligibility for Lifeline service and the type of documentation reviewed.
(u) Prior to obtaining money from the OUSF, an ETC must show compliance with 17 O.S. § 139.105(E).

165:59-9-5. Recertification of Lifeline eligibility

Each ~~telecommunications carrier that provides service to residential customers who qualify for participation in the Lifeline Service Program shall, annually, require documentation for each Lifeline Service Program participant, for the purpose of determining their continued eligibility for Lifeline Service Program credits.~~ETC, eligible to receive Lifeline support from the Oklahoma Lifeline Fund and/or the federal Lifeline Fund shall, annually, require each end-user subscriber to recertify confirming their continued eligibility for the State or Federal Lifeline program. The ETC shall retain a copy of the signed recertification form for three (3) years.

165:59-9-6. Retention of Lifeline eligibility records

All records, including the signup form showing proof of eligibility and a report from the third party verification system that shows the identity and address of the Lifeline customer was verified (unless the ETC obtained a waiver from the requirement to utilize a third party verification system) shall be retained by the ETC for a minimum of three (3) years.

PART 3. ADMINISTRATION OF THE OKLAHOMA LIFELINE FUND

165:59-9-13. Audits

The Administrator of the OLF shall conduct periodic reviews and/or audits of any telecommunications carrier's Lifeline Service Program. This review/audit shall include, but not be limited to:

(1) A review of the documentation on file with the telecommunications carrier regarding eligibility of the end-user to participate in the Lifeline Service Program; whether received during the initial enrollment or during the annual recertification process and,
(2) The amounts received by the telecommunications carrier for reimbursement from the OLF.

165:59-9-17. Reporting requirements

Each contributor to the OLF shall, ~~not later than January 15, 1998, and thereafter~~ within thirty (30) days from the date of a request made for information or a report by the Administrator or contracted agent, submit to the Administrator or contracted agent a completed report form based on a 12-month period identified by the Administrator or contracted agent, containing such information as designated by the Administrator.

PART 5. CONTRIBUTIONS AND REIMBURSEMENTS

165:59-9-23. Amount of contribution

(a) The Administrator or contracted agent shall, based on the adjusted amount to be contributed to the OLF, calculate the contribution required to be made to the OLF by each contributor, based on the fund level established by the Commission and the information provided pursuant to OAC 165:59-9-17.
(b) The funding from each carrier shall be based on the total retail-billed ~~Oklahoma~~ intrastate telecommunications revenues, from both regulated and unregulated services, of the telecommunications carrier as a percentage of all telecommunications carriers' total retail-billed intrastate telecommunications revenues, from both regulated and unregulated services for the 12-month period identified by the Administrator or contracted agent.
(c) Each telecommunications carrier shall pay its contribution directly to the Administrator or contracted agent on a monthly, quarterly, or annual basis, at the carrier's option, at the beginning of the payment period(s) selected. The ~~check or other negotiable instrument~~payment shall be payable to the ~~OLF~~OUSF. The invoice or other written request for OLF contributions shall be past due thirty (30) calendar days after the date on the invoice or other request for OLF contribution, unless otherwise ordered by the Commission.
(d) Interest shall be charged on any payment not received by the past due date at the rate of 1.5~~%~~ percent monthly.
(e) All contributions and interest payments made to the OLF shall be deposited into the ~~OLF~~ OUSF account by the Administrator or contracted agent.

165:59-9-27. Recovery of contribution

Each contributor to the OLF may recover its contributions consistent with ~~OAC 165:59-3-46.~~ 17 O.S. §139.105. The OLF recovery received by each provider shall be ~~trued-up annually~~ subject to an annual true-up. Any over- or under-recovery of the Lifeline Service Program contributions for the

preceding year shall be carried forward for inclusion in the calculation for recovery in the ensuing year.

[OAR Docket #15-450; filed 6-12-15]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 1. STATE BOARD OF EDUCATION

[OAR Docket #15-464]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Due Process
210:1-5-6. Suspension and/or revocation of certificates [AMENDED]
AUTHORITY:
70 O.S. § 3-104; State Board of Education
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 23, 2015
COMMENT PERIOD:
February 17, 2015 through March 19, 2015
PUBLIC HEARING:
March 19, 2015
ADOPTION:
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SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
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APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 8, 2015
FINAL ADOPTION:
June 8, 2015
EFFECTIVE:
August 27, 2015
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The amendments provide that certificate holders are responsible for keeping a current address on file with the State Department of Education, and notice of intent to revoke will be deemed complete when SDE sends notification via certified mail to the certificate holder's last known address. Under the amended rule, a revocation hearing may not be held less than 45 days after a complaint is filed, rather than 30 days under the previous version of the rule.
CONTACT PERSON:
Lori Murphy, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Telephone number: (405) 522-5260

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 5. DUE PROCESS

210:1-5-6. Suspension and/or revocation of certificates

(a) **Application.** The rules and regulations of the State Board of Education governing the suspension and revocation of certificates apply to the following: superintendents of schools, principals, supervisors, librarians, school nurses, school bus drivers, visiting teachers, classroom teachers and other personnel performing instructional, administrative and supervisory services in the public schools. Except as otherwise specifically provided by law, the issuance or denial of a new certificate shall not be considered an individual proceeding subject to the process and procedures set forth in this Section.

(b) **Grounds for revocation.** A certificate shall be revoked only for:

(1) A willful violation of a rule or regulation of the State Board of Education, or the United States Department of Education; or

(2) A willful violation of any federal or state law, or

(3) A conviction for any of the offenses or bases for revocation set forth in 70 O.S. §§ 3-104 or 3-104.1; or

(4) For other proper cause.

(c) It shall be a violation of State Board of Education rules and regulations for any person holding a valid teaching certificate to be aware of and fail to report, or knowingly participate in any activity deemed illegal while participating in job-related activities of student organizations, athletic and scholastic competitions, fairs, stock shows, field trips, or any other activity related to the instructional program. Willful violation of (b)(1)-(b)(4) of this regulation or the failure to report or knowing participation in any activity deemed illegal may result in recommendation of revocation or suspension of the certificate, or such other penalty, as may be determined after due process by the State Board of Education.

(d) **Right to hearing on revocation of an existing certificate.** No certificate shall be revoked until the holder of the certificate has been provided with a copy of the application to revoke the certificate and opportunity for a hearing provided by the State Board of Education in accordance with the following procedures:

(1) **Filing of application to revoke a certificate.** An individual proceeding to revoke a certificate shall be initiated by filing an application to revoke a certificate. An application to revoke a certificate shall be filed with the Secretary of the State Board of Education by the State Department of Education. The application shall name the holder of the certificate to be revoked as the respondent in the action, and shall contain:

(A) A statement of the legal authority and jurisdiction under which the applicant seeks to initiate the proceeding and the hearing is to be held;

(B) A reference to each particular statute and/or rule involved;

(C) A short and plain statement of the allegations asserted; and

(D) A statement of the facts alleged to give rise to the revocation. The application shall also state a proposed effective date for the relief requested (e.g., revocation), which shall be set no earlier than

~~thirty~~forty-five (~~30~~45) calendar days from the date the complaint is filed.

(2) **Informal disposition.** Informal disposition of the application to revoke a certificate may be made by stipulation, agreed settlement, consent order, or default, unless otherwise precluded by law. Written notice signed by each party or counsel representatives shall be delivered to the Secretary of the State Board of Education prior to the time of the scheduled hearing.

(3) **Notice to parties.** ~~a~~Within three (3) business days of the date the application to revoke a certificate is filed with the Secretary of the State Board of Education, the Secretary shall send a copy of the application along with a notice of intent to revoke the certificate by certified or registered mail, restricted delivery with return receipt requested, to the holder of the certificate. It is the responsibility of every certificate holder to notify the State Department of Education upon a change of address, and the mailing address on file for each certificate holder shall be presumed to be a proper address for service of notice. Service of notice of intent to revoke a certificate shall be deemed complete upon certified or registered mailing of the notice to the certificate holder's last known address. In addition to the requirements of notice set forth at 75 O.S. § 309, the notice of intent to revoke the certificate shall include:

(A) A statement setting forth the proposed effective date of revocation of the certificate; and

(B) A statement advising the holder that if the holder fails to appear for a hearing and contest the revocation, the allegations in the application for revocation will be deemed confessed and the Board may issue a final order to effect revocation of the certificate as of the effective date proposed in the notice.

(e) **Emergency Action.** Pursuant to 75 O.S. § 314, in the event the State Board of Education finds that public health, safety, or welfare imperatively requires emergency action, the State Board of Education may issue an emergency order summarily suspending a certificate pending an individual proceeding for revocation or other action. Such proceedings shall be promptly instituted and determined. Such an order shall include specific findings of fact specifying the grounds for the emergency action. Within three (3) business days of the issuance of the order by the Board, a copy of the order shall be sent to the holder of the certificate via certified or registered mail, delivery restricted to the certificate holder, with return receipt requested.

(f) **Hearing procedures.**

(1) **Hearing and appointment of a hearing officer.** Upon filing the application with the Secretary of the Board, the Secretary shall set the matter for a hearing. The Board, at its discretion, may utilize a hearing officer to conduct the hearing. If utilized, the hearing officer shall be appointed by the Chairperson of the Board.

(2) **Attendance of witnesses.** If the complainant, or the holder of the certificate wants any person to attend the hearing and testify as a witness, he/she shall notify the Chairperson of the State Board of Education at least ~~ten~~fifteen (~~10~~15) calendar days prior to the hearing, in writing, giving the name and address of the desired witness, and the Chairperson shall thereupon subpoena, by mail, the desired witness to attend in accordance with the provisions of this subsection. Every person testifying at a revocation hearing shall be sworn to tell the truth. The parties to the hearing shall exchange witness and exhibit lists and any exhibits no later than ~~five~~fifteen (~~5~~15) calendar days prior to the hearing.

(3) **Subpoenas.** Subpoenas and/or subpoenas duces tecum may be issued in accordance with the following procedures:

(A) **Issuance of subpoenas.** Subpoenas for the attendance of witnesses, or for the production of books, records, papers, objects, or other evidence of any kind as may be necessary and proper for the purposes of a proceeding shall be issued by the Secretary of the Board at the direction of the Chairperson; upon order of the Board; or at the request of any party to a proceeding before the Board. The signature of the Secretary shall be sufficient authentication for any subpoena.

(B) **Service of subpoenas.** Subpoenas shall be served in any manner prescribed for service of a subpoena in a civil action in the district courts of the State of Oklahoma.

(C) **Objections to and compliance with subpoenas.** Any party to the proceeding may move to quash a subpoena or subpoenas duces tecum issued in accordance with the provisions of this Section, provided that, prior to quashing a subpoena or subpoenas duces tecum the agency shall give notice to all parties. A subpoena or subpoenas duces tecum may not be quashed if any party objects.

(D) **Enforcement of subpoenas.** Upon the failure of any person to obey a subpoena, or upon the refusal of any witness to be sworn or make an affirmation or to answer a question put to her or him in the course of any individual proceeding or other authorized action of the Board, the Board as soon as convenient shall consider the issue of enforcement of the subpoena. By resolution, it may direct application to the district or superior court of the county of such person's residence or to any judge thereof for an order to compel compliance with the subpoena or the furnishing of information or the giving of testimony. Meanwhile, the hearing or other matters shall proceed, so far as is possible, but the Board at its discretion at any time may order a stay or continuance of the proceedings for such time as may be necessary to secure a final ruling in the compliance proceedings.

(E) **Costs of issuance and service of subpoenas.** The costs covering the issuance and service of subpoenas and all witness fees incurred on behalf of a party to the proceedings, other than the Board, shall be borne by the party on whose behalf they are incurred.

(4) **Right to representation.** Any party to the individual proceeding shall at all times have the right to representation by counsel, provided that such counsel must be duly licensed to practice law by the Supreme Court of Oklahoma, and provided further that counsel shall have the right to appear and act for and on behalf of the party represented.

(5) **Legal counsel to State Board of Education.** The attorney for the State Board of Education shall present evidence to the Board, in furtherance of the application. If deemed necessary by the Chairperson of the Board, a request may be made of the Attorney General to provide counsel to the Board to rule on questions of admissibility of evidence, competency of witnesses, and any other questions of law. In the event that counsel is not requested from the Attorney General the Chairperson of the Board will rule on the evidence, competency of the witness and other questions of law.

(6) **Disqualification of a Board member or hearing officer.** A Board member or hearing officer shall withdraw from any individual proceeding in which he or she cannot accord a fair and impartial hearing or consideration. Any party may request the disqualification on the ground of his or her inability to give a fair and impartial hearing by filing an affidavit promptly upon discovery of the alleged disqualification, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. The issue shall be determined promptly by the Board, or if it affects a member of the Board, by the remaining members thereof, if a quorum. Upon the entry of an order of disqualification affecting a hearing officer, the Board shall either assign a replacement hearing officer, or conduct the hearing itself. Upon the entry of an order of disqualification affecting a Board member, the Governor immediately shall appoint a member pro tempore to sit in place of the disqualified member in that proceeding.

(7) **Notice of facts.** The Board shall give notice to all parties, prior to, or at the hearing, of any facts of which it proposes to take official notice. Any party or her/his attorney may request that official notice be taken of any fact qualified for such notice by the statutes of this state. If such official notice is taken, it shall be stated in the record, and all parties shall have opportunity to contest and give evidence in rebuttal or derogation of the official notice.

(8) **Presentation and consideration of evidence.** The State Board of Education shall consider only evidence upon the specific cause contained in the notice, and evidence will be heard for such cause. Questions of the admissibility of evidence shall be governed by the provisions of 75 O.S. § 310.

(9) **Order of procedure.** The order of procedure at the hearing shall be as follows:

(A) Opening statements by legal counsel of both parties;

(B) Presentation of evidence by both parties followed by cross-examination of witnesses, and questions by State Board members or the hearing officer;

(C) Closing arguments by legal counsel of both parties; and

(D) Submission of case to the Board or the hearing officer for decision.

(10) **Continuance of a hearing.** The Board or hearing officer may continue or adjourn the hearing at any time for a specified time by notice or motion. The Board or hearing officer may grant a continuance upon motion of a party for good cause shown if written request is filed and served on all parties of record and filed with the Secretary of the Board at least five (5) days prior to the date set for hearing. A respondent may be granted only one (1) continuance.

(g) **Deliberations and decisions.** Deliberations by the Board or the hearing officer in an individual proceeding may be held in executive session pursuant to the provisions of the Open Meeting Act set forth at 25 O.S. § 307.

(1) **Decision.** Decisions shall be issued in accordance with the following procedures:

(A) After hearing all evidence, and all witnesses, the State Board of Education or, if applicable, the hearing officer, shall render its decision on whether the certificate shall be revoked.

(B) The decision of the State Board of Education or a hearing officer presiding at the hearing shall be announced at the conclusion of the hearing and notification of that decision shall be by certified or registered mail, restricted delivery with return receipt requested to the holder of the certificate.

(C) If the holder of the certificate fails to appear at the scheduled hearing without prior notification within the time frame to request a stay or continuance set forth in (f)(10) of this Section, demonstration of good cause, the Board or hearing officer shall hold the party in default and issue an order sustaining the allegations set forth in the application.

(D) If the applicant fails to appear at the scheduled hearing without prior notification within the time frame to request a stay or continuance set forth in subsection (f)(10) of this Section, demonstration of good cause, or fails to prove the allegations by clear and convincing evidence, the application shall be dismissed.

(2) **Findings of fact and conclusions of law.** After the decision is announced, but before issuance of the final order, if the Board has not heard the case or read the record of the individual proceeding, the hearing officer shall provide the parties with an opportunity to prepare and submit proposed findings of fact and conclusions of law in accordance with the provisions of 75 O.S. § 311. After the parties have been given notice and an opportunity to file exceptions, present briefs and oral arguments to the proposed findings of fact and conclusions of law, the Board may take action to accept, reject, or modify the proposed Findings and Conclusions of the hearing officer. The Board shall render findings of fact and conclusions of law. All findings of fact made by the Board shall be based exclusively on the evidence presented during the course of

the hearing or previously filed briefs, (made a part of the record), of the testimony of witnesses taken under oath.

(3) **Final order.** As the final determination of the matter, the final order shall constitute the final agency order and shall comply with the requirements set forth at 75 O.S. § 312. If no motion for rehearing, reopening or reconsideration of the order is filed in accordance with (h) of this Section, the final agency order shall represent exhaustion of all administrative remedies by the State Board of Education. All final orders in an individual proceeding shall be in writing and made a part of the record. Final orders are to be issued by the Chairperson of the Board or the presiding officer for transmission to the parties by the Secretary of the Board. Within five (5) business days of the date of issuance of the final order, parties shall be notified of a final order either personally or by certified mail, return receipt requested. Upon request, a copy of the order shall be delivered or mailed to each party and the party's attorney of record, if any.

(4) **Communication with parties.** Unless required for the disposition of ex parte matters authorized by law, the Chairperson and the members of the Board, the hearing officer, or the employees or the agents of the Board shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his or her representative except upon notice and opportunity for all parties to participate. The Chairperson and members of the Board or their employees may communicate with one another and have the aid and advice of one or more personal assistants. Advice may also be secured from the Attorney General's office.

(h) **Record of hearing.**

(1) The record of a hearing shall be set forth in such form and detail as the Chairperson or the Board may direct. The hearing may also be fully transcribed, and shall be placed on file in the Secretary's office. Parties to the proceeding may have the proceedings transcribed by a court reporter at their own expense. In accordance with the requirements of 75 O.S. § 309, the record shall include:

(A) All pleadings, motions, and intermediate rulings;

(B) Evidence received or considered during the individual proceeding;

(C) A statement of matters officially noticed;

(D) Questions and offers of proof, objections, and rulings thereon;

(E) Proposed findings and exceptions;

(F) Any decision, opinion, or report by the Board or a hearing officer presiding at the hearing; and

(G) All other evidence or data submitted to the Board or hearing officer in connection with their consideration of the case.

(2) The State Board Secretary shall electronically record the proceedings, with the exception of the executive sessions The recording shall be made and maintained in accordance with the requirements of 75 O.S. § 309, and a copy shall be provided to any party to the proceeding upon request. If the requesting party should desire the tape(s) to be transcribed by a court reporter, the requesting party shall bear the expense.

(i) **Rights to a rehearing, reopening or reconsideration.**

(1) A petition for rehearing, reopening or reconsideration of a final order must be filed with the Secretary of the State Board within ten (10) days from the entry of the order. It must be signed by the party or his or her attorney, and must set forth with particularity the statutory grounds upon which it is based. However, a petition based upon fraud practiced by the prevailing party or upon procurement of the orders by perjured testimony or fictitious evidence may be filed at any time. All petitions for rehearing, reopening, or reconsideration will be considered and ruled upon as soon as the convenient conduct of the Board's business will permit.

(2) A petition for a rehearing, reopening, or reconsideration shall set forth the grounds for the request. The grounds for such a petition shall be either:

(A) Newly discovered or newly available evidence, relevant to the issues;

(B) Need for additional evidence adequately to develop the facts essential to proper decision;

(C) Probable error committed by the Agency in the proceeding or in its decision such as would be grounds for reversal on judicial review of the order;

(D) Need for further consideration of the issues and the evidence in the public interest; or

(E) A showing that issues not previously considered ought to be examined in order to properly dispose of the matter. The grounds which justify the rehearing shall be set forth by the State Board of Education which grants the order, or in the petition of the individual making the request for the hearing.

(3) It is the burden of the party requesting a rehearing to notify the opposing party of the appeal.

(4) Rehearing, reopening, or reconsideration of the matter may be heard by the State Board of Education or may be referred to a hearing officer. The hearing must be confined to those grounds on which the recourse was granted.

(j) **Judicial review.** Any person or party aggrieved or adversely affected by a final order in an individual proceeding is entitled to certain judicial review in accordance with the provisions of the Oklahoma Administrative Procedures Act, and the procedures set forth therein shall govern appeals.

(k) **Applications for reinstatement of a license.** After five (5) years of the effective date of revocation of a license, an individual may apply for reinstatement of the license in accordance with the application procedures set forth by the State Department of Education.

[OAR Docket #15-464; filed 6-12-15]

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

[OAR Docket #15-465]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
210:10-1-5. Audits [AMENDED]
AUTHORITY:
70 O.S. § 3-104; 70 O.S. § 1-109; 70 O.S. §1-111; State Board of Education
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
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FINAL ADOPTION:
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EFFECTIVE:
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SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The amendments update the rule to reflect changes to 70 O.S. §§ 1-109 and 1-111 made by House Bill 1864. HB 1864 added the option for school districts to implement a 1,080 hour school year as an alternative to a 180 day school year, so the attendance provisions in the rule required an update to clarify application to districts that choose a 1,080 hour school year format.
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 1. GENERAL PROVISIONS

210:10-1-5. Audits

(a) **Financial audit.** All schools are required to make available, to personnel of the State Department of Education, all records pertaining to Federal programs, state aid appropriations and expenditures from the general fund of the previous year; making it possible to complete an audit on all funds. Public officials, members of the boards of education, superintendents, principals, and any other persons, whose duty it is to make appropriations and/or expenditures in accordance with the provisions of the state aid law, the federal law and regulations of the State Board of Education, will be held responsible for any misappropriation or illegal expenditure of such funds.

(b) **Penalty.** If it is discovered that a school district is unable to pay its current year's obligations through careless handling of funds by the school administrator, the State Board of Education may require the administrator to show cause why his administrator's certificate should not be revoked.

(c) **Student attendance record audits.**

(1) Regional Accreditation Officers of the State Department of Education are required to audit the student attendance records of all Oklahoma public school districts.

(2) In addition to the Statistical Report, the official document for student attendance accounting and auditing is the Student Attendance Register. All other student attendance documents, reports and summaries only support the accuracy of the Student Attendance Register and the Statistical Report.

(3) A school or program within a district that has a different school year from the district must present a separate Statistical Report and Attendance information reflecting the different school year for that school or program. The school or program will be audited separately from the district.

(4) Each person who keeps a Student Attendance Register is required to make all entries in ink, record the attendance data for each pupil each day, keep the Register in a safe place and understand that the Register is subject to audit at any time.

(5) If the attendance records show that school was maintained for less than a full annual term without approval of the State Board of Education, state aid will be reduced accordingly unless it can be shown that the attendance records as originally presented were in error.

(6) When attendance, membership or transportation is deducted for any reason by the audit, state aid will be reduced accordingly. Factual information may be presented by the school within ninety (90) calendar days from the date of the audit showing acceptable evidence that indicates the audit is in error.

(d) **Enrollment.**

(1) Enrollment means recording the name of a pupil on a class roll. Total Enrollment for an attendance period or for the year, whether for a class or for an entire school is the number of all enrollments so recorded. If a student is promoted or moves from one district or school to another during a school year, the student's name will be recorded on each class roll concerned. A record of that student's enrollment will be included in the original and every subsequent roll even though the pupil will be dropped from the original roll and every subsequent roll except the current one.

(2) All students attending any school within a school district, including underage, overage, nongraded, nonresident, tuition and nontransferred students, shall have their names entered in the attendance register and have their attendance recorded in the same manner as any other

student. Students are to be placed on roll the first day that the student actually attends class.

(e) **Entry, gain and loss.**

(1) Source of Entry will always be placed on both the Register and the Master Roster. The Source of Entry will be entered on the date that the child begins school and it consists of a letter and a number. The letter indicates whether the student is entering a public school in this state for the first time during the current school year. The number identifies where the student was previously enrolled. Both the letter and number are to be used for Source of Entry.

(2) A student cannot be an Original Entry more than once during any one school year. The student only has one Original Entry regardless of the number of different classrooms, schools or school districts in which the pupil enrolls or attends during the year. Entry codes are recorded on the first day the student actually attends class. There are two kinds of entry codes:

(A) E1 - A student entering a public school for the first time during the current school year. The student has not been enrolled in Oklahoma or any other state. However, a student transferring from a private or parochial school during the current school year is also classified as an E1.

(B) E2 - A student entering a public school in Oklahoma from another state. The student has previously been enrolled in a public school in another state during the current school year.

(3) When a pupil enrolls in a public school classroom in this state a second or succeeding time during the current school year, the student is called a Gain. A student can be a Gain more than once during the same school year. The number of Gains in a school or school district do not decrease during the current school year. Gain codes are recorded on the first day the student actually attends class. There are four kinds of gains:

(A) G1 - A student enters a classroom by transfer or promotion from another school in the same school district.

(B) G2 - A student enters from another school district in Oklahoma.

(C) G3 - A student reenters the same school after a withdrawal due to illness, suspension, necessity to work, truancy, or temporary absence from the district.

(D) G4 - A student reenters the same school system after an apparent permanent withdrawal.

(4) A Loss code is recorded each time a student withdraws from school. Loss codes are to be recorded on the date when the loss occurred. A student is not considered to be off roll until a Loss code is recorded. There are four kinds of Losses:

(A) L1 - A student is promoted to another grade or transferred to another school in the same school district.

(B) L2 - A student moves to another school district in Oklahoma.

(C) L3 - A student leaves school due to sickness, suspension, necessity to work, truancy or temporary absence from the district.

(D) L4 - A student leaves school due to passing compulsory school age, graduation, dropping out, moving to another state, attending a nonpublic school or death.

(5) All Entries, Gains and Losses are to be entered in the Student Attendance Register on the day that the transaction occurs. Students are not considered on roll until they actually attend class. Students are always considered on roll until a loss code is entered.

(f) **Attendance and absence.**

(1) A student is to be considered present only on those days when in actual attendance in school or when participating in scheduled school activities under the direction and supervision of a regular member of the faculty. A student who is excused from attending school during an examination period or because of sickness or for any other reason shall not be counted in attendance.

(2) All student attendance, absence and transportation information is compiled on a half-day basis with the exception of attendance, absence and transportation information for half-day early childhood or kindergarten programs which are recorded on a full-day basis. A student must be in attendance ~~two of the first three hours~~for two-thirds (2/3) of the first half of the school day to be recorded present for one-half day; likewise, a student must be in attendance ~~two of the final three hours~~for two-thirds (2/3) of the second half of the school day to be recorded present for one-half day.

(3) School hours are different from school periods. A school day must consist of six hours not including a lunch period. The six-hour school day can be divided into periods as the school deems appropriate.

(4) A student who is suspended out of school for any length of time is to be dropped as an L3 on the first day of the suspension. The suspended student is to be recorded as a G3 when the student returns to class. A student who is absent from the classroom without excuse ten consecutive days is to be recorded as absent each day. On day eleven, the pupil is to be dropped (L3) from the roll. All withdrawals are to be recorded on the date that the student is no longer in attendance.

(5) A school day for kindergarten or early childhood can either be ~~two and one-half or six hours long.~~a half-day of at least two and one half (2 $\frac{1}{2}$) hours, or the district's standard full school day. However, kindergarten and early childhood absence and attendance is always recorded on a full day basis. Nongraded pupils who are on a partial day schedule are to be counted on roll and in attendance when present.

(6) As a condition of receiving accreditation from the State Board of Education, all students in Grades nine through twelve shall enroll in a minimum of six periods, or the equivalent in block scheduling, of rigorous academic and/or rigorous vocational courses each day, which may

include arts, vocal and instrumental music, speech classes, and physical education classes.

(g) **School activities.** School activities may take place either on the school premises or off the school premises. In order for a student to be counted in attendance, the school activity must be under the direction and supervision of a teacher. Students dismissed and not under the direction and supervision of a teacher cannot be considered as participating in a school activity and cannot be counted in attendance. A student serving as a legislative page is to be counted in attendance at the school.

(h) **Parent-teacher conference days.** Only students active in membership are to be counted in attendance on parent-teacher conference days. Only one parent-teacher conference day per semester will be counted for attendance purposes as a regular school day and included as part of the ~~175~~180 days of required classroom instruction. Other days are encouraged above the one day per semester for parent-teacher conferences, but will not be counted for attendance purposes as regular school days. For a school district which has implemented a one thousand eighty (1,080) hour school year pursuant to 70 O.S. § 1-109, parent-teacher conferences may be counted as classroom instruction time for no more than six (6) hours per semester, for a total of up to twelve (12) hours per school year.

(i) **Concurrent enrollment.** A school district may receive full average daily attendance on a high school student who is participating in concurrent enrollment. In determining a legal school day for a student who is concurrently enrolled the district can use a combination of local school enrollment, college enrollment, and travel time. A student participating in concurrent enrollment is considered present when traveling to or from and while attending the college.

(j) **Professional meeting day.**

(1) The State Board of Education has defined a professional meeting day to be any day on which the faculty of a school district is engaged in the educational planning for improvement of the local school system; or that the faculty engages in a local, county, district or state education planning workshop or teacher's meeting. Such a day shall be identified as a professional day in each attendance register on the day the meeting occurred.

(2) Days used to work at the beginning or at the end of the school year shall not be counted as professional development activities. Preparing the classroom for instruction, grading papers, recording grades, completing report cards or enrolling students are not examples of professional development activities.

(3) A school district may not count more than thirty (30) hours each school year that are used for attendance of professional meetings toward the one hundred eighty (180) days or one thousand eighty (1,080) hours of classroom instruction time that school is required to be in session.

(k) **Transportation.**

(1) A student must reside one and one-half miles or more by commonly traveled road from the school attended to be considered transported. Students living less than one-and one-half miles from the school may be transported but shall not be counted as transported pupils on the Transportation Report for state aid purposes.

(2) Transportation may be provided for early childhood and kindergarten students to and from school during the normally scheduled morning and afternoon bus operation. Districts may also provide additional transportation, at local expense, for either early childhood or kindergarten students at midday. However, the school district is not required to provide midday transportation to either early childhood or kindergarten students. Midday transportation for early childhood and kindergarten pupils shall not be recorded on the Transportation Report.

(3) A legally transferred or tuition student residing outside of the school district's approved transportation area may be transported to the school provided the student meets the bus within the transporting district's approved transportation area. However, tuition students may not be counted as transported students on the Transportation Report.

(l) **Authority for birth.**

(1) Documentation that can be used to verify school age. Examples of Authority for Birth are:

(A) Birth certificate
(B) Attending physician's certificate
(C) Permanent school record
(D) Family bible
(E) Parent statement
(F) Last year's attendance register
(G) Other official scholastic record

(2) Birth certificates, if available, must be provided for kindergarten and first grade students who are first-time enrollees. Each different Authority for Birth must have its own unique code on the Master Roster.

(m) **Basis of admission.**

(1) A student is admitted to school because the student meets certain criteria. Examples of Basis of Admission are:

(A) The student's parents are residents of the district
(B) The student has a valid transfer
(C) The student is a 9-12th grade pupil who resides in an elementary school district
(D) The student is a nonresident pupil that pays tuition in order to attend this school

(2) Each different Basis of Admission must have its own unique code on the Master Roster.

(n) **Career and Technology Center.** Students are considered in attendance when traveling to or from and while attending a Career and Technology Center.

(o) **Home-based program.** An educational program for special education students who are unable to participate in a full-day educational program at school. Home-based pupils are considered on roll and in attendance.

(p) **Nongraded.** Students who are below school age, but at least three years old, who are required by law to be served by the public schools. Also, students who have passed compulsory attendance age and are required by law to be served by

the public schools may be classified as nongraded. Nongraded students are carried on roll and in attendance.

(q) **Out-of-home placement.** A student who is not a resident of the district but is housed and educated in a residential child facility or a treatment center located in the district. Out-of-home placement students are carried on roll and in attendance and are considered resident students during the time the students are at the facility.

[OAR Docket #15-465; filed 6-12-15]

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

[OAR Docket #15-466]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
210:10-1-18. Transfers [AMENDED]
AUTHORITY:
70 O.S. § 3-104; 70 O.S. § 8-103; 70 O.S. § 8-103.1; 70 O.S. § 8-104; 70 O.S. § 8-113; 70 O.S. § 18-110; 70 O.S. § 13-101; 70 O.S. § 1210.307; State Board of Education
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
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Approved by Governor's declaration on June 8, 2015
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June 8, 2015
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August 27, 2015
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The amendments revise the deadlines for submission and approval of applications for student transfers pursuant to the Education Open Transfer Act. The amendments to the rule add a procedure to implement the provisions of House Bill 1422 (2013), whereby a student who has been the victim of harassment, intimidation, or bullying may request an emergency transfer to another school district if the sending school was notified of the incident(s) before the student files the application for transfer. The amendments also add a provision implementing the Deployed Parents School Act at 70 O.S. § 103.1, which permits transfer of students to a district in which the student will be residing with a relative if the student is a dependent child of a temporarily deployed active duty member of the military. Language has also been added to clarify other statutory bases for transfers.
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 1. GENERAL PROVISIONS

210:10-1-18. Transfers

(a) **Governing statutes.** All district transfers shall be governed by the Oklahoma Education Open Transfer Act, 70 O.S. § 8-101.1, et seq. In addition, the following types of transfers are governed by the following provisions of law:

(1) **Students with disabilities.** Transfers made for the purpose of providing a free appropriate public education (FAPE) to special education students shall be governed by 70 O.S. § 18-110 and 70 O.S. § 13-101, et seq. Such transfers shall not be considered open transfers subject to the provisions of (d) of this Section.

(2) **Gifted and talented students.** Transfers made for the purpose of providing gifted child educational programs shall be governed by 70 O.S. § 1210.307.

(3) **Parents who are teachers.** Transfers for the purpose of allowing a student to attend school in a district in which the student's parent is employed as a teacher shall be governed by 70 O.S. § 8-113.

(4) **Deployed parents.** Transfers for the purpose of allowing a student of a deployed parent to attend school in a district in which a family member resides shall be governed by 70 O.S. § 8-103.1.

(5) **Emergency transfers.** Transfers on the basis of an emergency shall be governed by 70 O.S. § 8-104.

(6) **Sibling transfers.** Transfers of siblings pursuant to the provisions of 70 O.S. § 8-101.2 shall be processed as open transfers in accordance with the requirements of 70 O.S. § 8-103 and (d) of this Section. Transfers of multiple birth siblings shall be processed as open transfers, provided that if multiple birth siblings are transferred to the same receiving district, a parent or guardian may request placement at the same school and/or in the same classroom under the provisions of 70 O.S. § 25-154(A).

(b) **District policies and procedures pertaining to student transfers.** Local school districts shall adopt policies and procedures governing the transfer of students who do not reside in the school district. Such policies and procedures shall comply with all provisions of state law governing student transfers, including the statutes pertaining to transfers referenced in (a) of this Section. If permitted by statute and the provisions of this Section, the receiving school board of education may refuse the transfer request of a student who does not reside in the district in accordance with the provisions of the adopted policy, but may not accept or deny a request based on statutorily prohibited factors as set forth in 70 O.S. § 8-103.1.

(~~b~~c) **Definitions.** The following words and terms, when used in this subchapter, shall have the following meaning, unless

the context clearly indicates otherwise:~~definitions shall apply in State Department of Education rules relating to transfers:~~

~~(1) Open Transfer The transfer of a student from the district in which the student resides to another school district furnishing the grade the student is entitled to pursue. An open transfer may be requested and approved only during the statutory timeframe.~~

(1) **"Active duty orders"** means temporary transfer of a member of the active uniformed military services of the United States to a location that is outside of the service member's school district of residence in compliance with official orders in support of combat, contingency operation or a natural disaster that requires the use of orders for more than thirty (30) consecutive days.

(2) **"Deployed parent"** means a "parent" under the definition set forth in this subsection who is a member of the active uniformed military services of the United States, is on full-time active duty status or active duty orders, and for whom Oklahoma is the home of record.

(~~2~~3) **"Emergency transfer"~~Transfer~~**means the transfer of a student from the district in which the student resides to another school district furnishing the grade the student is entitled to pursue which, for specific reasons, must be requested and approved outside of the statutory timeframe required for open transfers.

(~~3~~4) **"IEP service agreement"~~Service Agreement~~**~~An~~means an Individualized Education Program agreement between school districts to provide special education and related services to an eligible student with a disability solely for the purpose of providing the student a free appropriate public education (FAPE). An IEP Service Agreement is the resourcing of special education and related services (i.e., all services required to be provided to a student pursuant to the provisions of the IDEA) to a school district that provides special education and related services to an eligible student with a disability on behalf of the resident district.

(5) **"Open transfer"**means the transfer of a student from the district in which the student resides to another school district furnishing the grade the student is entitled to pursue. An open transfer may be requested and approved only during the statutory timeframe.

~~(4) **"Special Education and Related Services"** All means all services required to be provided pursuant to the Individuals with Disabilities Education Act (IDEA) U.S.C. §§ 1400, et seq.~~

(6) **"Parent"**means the parent, legal guardian, or person having custody of the student seeking a transfer, whose residence is used to determine the residence of the student in accordance with the provisions of 70 O.S. § 1-113(A)(1). For purposes of the Individuals with Disabilities Act at 20 U.S.C. § 1400 et seq. (IDEA), the definition of parent set forth in 34 C.F.R. § 300.30 shall supersede the definition of parent set forth in this subsection.

(~~5~~7) **"Receiving school district"**~~School District The~~means the school district in which the student is seeking to be transferred.

(~~6~~8) **"Resident school district"**~~School District The~~means the school district in which the parent, guardian, or person having custody of the student resides, as defined in 70 O.S. § 1-113(A)(1).

~~(7) Parent For purposes of the Education Open Transfer Act, this includes the parent, guardian, or person having custody of the student, as defined in 70 O.S. § 1-113(A)(1). For purposes of IDEA, the definition of parent set forth in 34 C.F.R. § 300.30 shall supersede this rule.~~

(9) **"Teacher"**means any person employed in a position that meets the definition of a teacher set forth in 70 O.S. § 1-116.

(~~c~~d) **Open Transfers.** Transfers to another district may be approved by the board of education of the receiving school district. If the grade a student is entitled to pursue is not offered in the district where the student resides, the transfer shall be automatically approved by the receiving school district. No student may be granted more than one (1) open transfer per school year, but may qualify for additional transfers pursuant to emergency provisions of the Education Open Transfers Act or a legal change in residence. All open transfers must be initiated and processed in accordance with the following procedures:

(1) The parent of the student must complete an application form specified by the State Board of Education. The application must be ~~submitted to~~filed with the receiving school district by ~~April 1~~May 31 of the school year preceding the school year for which the transfer is being requested.

(2) No later than May 31 of the same year in which the transfer is requested, the ~~The~~ receiving school district shall notify the resident school district that an application for transfer has been filed by the student enrolled in the resident school district.

(3) No later than July 15 of the same year in which the transfer is requested, the ~~The~~ board of education of the receiving school district shall approve or deny the application ~~no later than June 1 of the same year~~ and notify the parents of the student of the decision in writing.

(4) No later than August 1 of the same year in which the transfer is requested, the ~~The~~ parents of the student shall ~~confirm enrollment in writing with~~provide the receiving school district with written notification that the student will be enrolling in the receiving school district.~~by July 1 of the same year.~~ Failure of the parents to notify may result in the loss of the student's right to enroll in the school district for that year only. If a parent fails to notify the receiving school district that a student will be enrolling, and the receiving school district chooses to cancel the transfer, the receiving school district shall provide a written notice of the cancellation to the parent and the resident district immediately upon cancellation.

~~(5) Local school districts shall adopt a policy governing the transfer of students who do not reside in the school district. A receiving school board of education may refuse the transfer request of a student who does not reside in the district in accordance with the provisions of the adopted~~

~~policy, but may not accept or deny a request based on statutorily prohibited factors as set forth in 70 O.S. § 8-103.1.~~

(~~6~~5) Approval of the resident district is not required for an open transfer.

(~~7~~6) Transfer requests submitted outside of the statutory time frame for open transfers will not be considered timely and must meet the statutory criteria of an emergency transfer to be approved.

(7) Notwithstanding the provisions of this subsection, a student shall be allowed to transfer to a school district in which a parent of the student is employed as a teacher upon the approval of the receiving district only, without regard to the deadlines or other limitations on number of transfers set forth in this subsection.

(~~d~~e) **Emergency ~~Transfers~~and mandatory transfers.** In addition to the open transfer process, students may be transferred on an emergency basis~~,~~ as prescribed by statute or on the basis of a transfer mandated by statute. Emergency transfers must be initiated and processed in accordance with the following procedures:

(1) The parents of the student may make an application for an emergency transfer. The application for emergency transfer must be filed with the superintendent of the receiving school district.

(2) The superintendent of the receiving school district or his/her designee responsible for approving transfers may approve the emergency transfer only upon an adequate showing of emergency, and subject to approval of the State Board of Education.

(3) Only the superintendent of the receiving school district or his/her designee responsible for approving transfers may submit an application for emergency transfer to the State Board of Education for approval. The superintendent or designee of the receiving school district shall collect documentation from the student desiring to be transferred, and may be required to submit such documentation to the State Board of Education through the State Department of Education's student information system. In submitting an application for an emergency transfer to the State Board of Education, the superintendent or designee verifies that he/she has personally reviewed and approved the application and has a good faith belief that the student qualifies for an emergency transfer.

(A) If the superintendent has appointed a designee to review and approve emergency transfers, the school district shall notify the State Department of Education of the appointment.

(B) Resident district approval of an emergency transfer is only required if ~~the~~ an emergency transfer is being requested on the basis of concurrence of both the resident district and the receiving school district~~conducted~~ pursuant to 70 O.S. § 8-104(5). Emergency transfer approval requests submitted to the State Board of Education on the basis of 70 O.S. § 8-104(5) shall be reviewed by the resident district within ten (10) business days of submission. Failure of the resident district to take action to approve or deny the emergency transfer request within ten (10) business days shall result in an automatic approval.

(4) Emergency transfers shall be approved only in the following circumstances:

(A) The destruction or partial destruction of a school building;

(B) Inability of the resident district to offer the subject a student desires to pursue, if the student becomes a legal resident of the school district after February 1 of the school year immediately prior to the school year for which the student is seeking to transfer.

(C) A catastrophic medical problem of a student, which for purposes of this section shall mean an acute or chronic serious illness, disease, disorder or injury which has a permanently detrimental effect on the body's system or renders the risk unusually hazardous;

(D) Total failure of transportation facilities;

(E) With the concurrence of both the ~~sending~~ resident and receiving school districts;

(F) The unavailability of remote or on-site Internet-based instruction by course title in the district of residence for a student identified as a result of the district's intake and screening procedures as in need of drop-out recovery or alternative education services, provided such student was enrolled at any time in a public school in this state during the previous three (3) school years; ~~or~~

(G) The unavailability of a specialized deaf education program for a student who is deaf or hearing impaired. This transfer may be processed and handled as an IEP Service Agreement. Such determination shall be made in coordination with the parents of the requesting student; or.

(H) When a student has been the victim of harassment, intimidation and bullying as defined in 70 O.S. § 24-100.3, and the receiving school district has verified that:

(i) The student has been the victim of harassment, intimidation or bullying; and

(ii) The resident school district was notified of the incident or incidents prior to the filing of the application for transfer;

(5) Obtaining an emergency transfer by submitting an application that includes false or inaccurate information, or obtaining an emergency transfer on behalf of a student who remains in the resident school district may result in a reduction of a district's funding allocation based on Average Daily Attendance (ADA) and/or Average Daily Membership (ADM).

(6) If a student to whom ~~a~~an emergency transfer has been granted fails to report and/or enroll in the receiving school district, the superintendent of the receiving school district shall notify the State Board of Education and the resident school district within ten (10) business days.

(f) **Deployed parents.** Student transfers under the Deployed Parents School Act of 2012 at 70 O.S. § 8-103.1 shall be processed in accordance with the following provisions:

(1) The parents of the student may make an application for a deployed parent transfer. The application for a deployed parent transfer must be filed with the superintendent of the receiving school district.

(2) The superintendent of the receiving school district or his/her designee responsible for approving transfers may approve deployed parent transfer only upon an adequate showing of the following:

(A) The parent meets the definition of a deployed parent set forth in (c) of this Section;

(B) The parent has a current, valid identification card issued by the United States Department of Defense; and

(C) The student will be residing with a relative of the student who lives in the receiving school district or who will be living in the receiving school district within six (6) months of the date that the application for transfer is filed.

(3) Transfers pursuant to the provisions of this subsection shall not be subject to the open transfer deadlines set forth in (d) of this Section.

(g) **Cancellation of transfers.** Transfers may only be cancelled in accordance with the following provisions:

(1) Open transfers may not be cancelled unless the receiving school district has notified the resident school district and parent~~s~~ of the students of its intent to cancel the transfer by July 15 prior to the school year for which the school district seeks to cancel the transfer.

(~~7~~2) Emergency transfers may only be cancelled with the concurrence of the board of the receiving school district and the parent~~s~~ of the student. A school district must notify the parent in writing of the date and time for which the transfer will be considered for cancellation by the school board and the written notice must be received by the parent no less than five (5) business days prior to the date of a regularly scheduled meeting at which the proposed cancellation will be considered, or no less than forty-eight (48) hours prior to the meeting at which the proposed cancellation will be considered if it is a special meeting.

(h) **Reporting transfers.** On or before September 1 of each school year, the Superintendent of each receiving school district shall file a statement with the State Board of Education and each resident school district showing the name and grade level of each student granted a transfer to the receiving school district.

[OAR Docket #15-466; filed 6-12-15]

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

[OAR Docket #15-467]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 3. Child Nutrition Program
Part 11. Foods of Minimal Nutritional Value
210:10-3-111. Restricting access to foods of minimal nutritional value [REVOKED]

AUTHORITY:
70 O.S. § 3-104; 7 C.F.R. § 210.11; State Board of Education

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 7, 2014

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Approved by Governor's Declaration on June 8, 2015

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August 27, 2015

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
Revocation of this rule was required by revisions to United States Department of Agriculture nutritional regulations regarding foods sold in schools outside the federal school meal programs. The revised USDA nutrition standards are outlined in a new rule at 210:10-3-112.

CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 3. CHILD NUTRITION PROGRAM

PART 11. FOODS OF MINIMAL NUTRITIONAL VALUE

210:10-3-111. Restricting access to foods of minimal nutritional value [REVOKED]

~~This section contains rules related to the limiting of student access to foods of minimal nutritional value, as provided in 70 O.S. § 5-147.~~

~~(1) Each district board of education shall ensure that students in elementary school facilities are not provided foods of minimal nutritional value except on special occasions. (70 O.S. § 5-147)~~

~~(2) Each district board of education shall ensure that students in middle and junior high school facilities are not provided foods of minimal nutritional value except after school, at events which take place in the evening, and on~~

~~special occasions. An exception to the minimal nutritional value standard will be diet soda with less than ten (10) calories per bottle or can.~~

~~(3) Each district board of education shall ensure that students in high school facilities are provided healthy food options in addition to any foods of minimal nutritional value to which they may have access at school. Each district shall provide incentives, such as lower prices or other incentives, to encourage healthy food choice for high school students.~~

~~(4) For purpose of this section, "foods of minimal nutritional value" means any food so defined in 7 CFR 210.11 and listed in Appendix B of the regulations for the National School Lunch Program.~~

~~(5) There may be exceptions to the above-named rules in certain instances. For example, foods of minimal nutritional value may be allowed when used as part of an instructional program, when prescribed by a physical or as part of a student's individualized education program (IEP), when part of a lunch brought from home, or when used as an ingredient in a special recipe, e.g., cupcakes with jelly beans, sweet potatoes with marshmallow topping, etc.~~

[OAR Docket #15-467; filed 6-12-15]

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

[OAR Docket #15-468]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Child Nutrition Program
Part 11. Foods of Minimal Nutritional Value
210:10-3-112. Smart Snacks in School [NEW]
AUTHORITY:
70 O.S. § 3-104; 7 C.F.R. § 210.11; State Board of Education
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n/a
ANALYSIS:
The new rule lists federal nutrition guidelines for foods and beverages sold at schools, during the school day, outside the school meal programs. The rule is necessary to update state regulations to reflect implementation of the revised federal nutritional requirements for foods sold in schools. The rule also provides for certain fundraiser sales that are exempt from the nutritional requirements, as permitted by federal law.
CONTACT PERSON:
Lori Murphy, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Telephone number: (405) 522-5260

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 3. CHILD NUTRITION PROGRAM

PART 11. FOODS OF MINIMAL NUTRITIONAL VALUE

210:10-3-112. Smart Snacks in School

(a) **Smart Snacks in School nutrition standards.** Pursuant to the USDA Smart Snacks in School nutrition standards at 7 C.F.R. 210.11, competitive foods-those foods sold in schools during the school day, outside the federal reimbursable school meal programs-must meet the following requirements:

(1) **General standards for competitive food.** To be allowable, a competitive food itemmust:

(A) Be a grain product that contains 50% or more whole grains by weight or have whole grain as the first ingredient (after water); or

(B) Have as the first ingredient (after water) one of the non-grain main food groups: fruits, vegetables, dairy, or protein foods (meat, beans, poultry, seafood, eggs, nuts, seeds, etc.); or

(C) Be a combination food that contains at least $\frac{1}{4}$ cup fruit and/or vegetable.

(2) **Nutrient standards for competitive food.** Allowable competitive food items must contain:

(A) 35% or fewer calories from total fat;

(B) Fewer than 10% calories from saturated fat;

(C) Less than 0.5 g trans fat per portion;

(D) 35% or less of weight from total sugar;

(E) 200 mg or less sodium per item for snack items and side dishes sold a la carte, and 480 mg or less sodium per item for entrees sold a la carte;

(F) 200 calories or fewer per item for snack items and side dishes, and 350 calories or fewer per item for entrees sold a la carte;

(G) Limited use of accompaniments, and the accompaniment must be included in the nutrient profile as part of the food item; and

(H) Foods and beverages sold at elementary schools and middle schools may not contain caffeine.

(3) **Standards for beverages.** The standards for beverages sold as competitive food items differ among elementary schools, middle schools, and high schools.

(A) In elementary schools, the following beverages are allowable as competitive items:

(i) Plain water or plain carbonated water, no limit;

(ii) Low fat unflavored milk, 8 fl. oz. or less;

(iii) Non fat flavored or unflavored milk (including nutritionally equivalent milkalternatives), 8 fl. oz. or less;

(iv) 100% fruit/vegetable juice, 8 fl. oz. or less; and

(v) 100% fruit/vegetable juice diluted with water, with or without carbonation (no added sweeteners), 8 fl. oz. or less.

(B) In middle schools, the following beverages are allowable as competitive food items:

(i) Plain water or plain carbonated water, no limit;

(ii) Low fat unflavored milk, 12 fl. oz. or less;

(iii) Non fat flavored or unflavored milk (including nutritionally equivalent milkalternatives), 12 fl. oz. or less;

(iv) 100% fruit/vegetable juice, 12 fl. oz. or less; and

(v) 100% fruit/vegetable juice diluted with water, with or without carbonation (no added sweeteners), 12 fl. oz. or less.

(C) In high schools, the following beverages are allowable as competitive food items:

(i) Plain water or plain carbonated water, no limit;

(ii) Low fat unflavored milk, 12 fl. oz. or less;

(iii) Non fat flavored or unflavored milk (including nutritionally equivalent milkalternatives), 12 fl. oz. or less;

(iv) 100% fruit/vegetable juice, 12 fl. oz. or less;

(v) 100% fruit/vegetable juice diluted with water, with or without carbonation (noadded sweeteners), 12 fl. oz. or less;

(vi) Other flavored and/or carbonated beverages of 20 fl. oz. or less, that are labeledto contain 5 or fewer calories per 8 fl. oz., or 10 or fewer calories per 20 fl. oz.; and

(vii) Other flavored and/or carbonated beverages of 12 fl. oz. or less, that are labeledto contain 40 or fewer calories per 8 fl. oz., or 60 or fewer calories per 12 fl. oz.

(b) **Exempt fundraisers.** A school district that wishes to conduct fundraisers that are exempt from the rules in subsection (a) must adopt a written policy, which shall provide for the following:

(1) Each school site shall designate a Smart Snacks in School Exempt Fundraiser contactperson, who shall be responsible for maintaining up-to-date documentation regarding each exempt fundraiser held at the school site;

(2) A limit of thirty (30) exempt fundraisers per semester may be held at each school site;

(3) Exempt fundraisers are prohibited from taking place while meals are being served to students under the National School Lunch Program or the National School Breakfast Program, and while afterschool snacks are being served to students under the Afterschool Snack Program;

(4) The maximum duration of any individual exempt fundraiser shall be fourteen (14) days; and

(5) For each individual exempt fundraiser, documentation must be kept on file at the school site showing:

(A) The school organization, activity, class, or other group that benefits from thefundraiser; and

(B) The date(s) the fundraiser is conducted, with the duration not to exceed fourteen (14) days.

(c) A school site is not authorized to conduct or allow any exempt fundraisers unless the school district has adopted a written policy that meets the requirements of this subsection. All competitive foods sold in a school district that does not have such a written policy must meet the nutritional guidelines listed in subsection (a).

[OAR Docket #15-468; filed 6-12-15]

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

[OAR Docket #15-469]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 13. Student Assessment
210:10-13-11. Testing students with disabilities [AMENDED]
AUTHORITY:
70 O.S. § 3-104; 70 O.S. § 1210.505 et seq.; State Board of Education
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ANALYSIS:
The amendments establish statewide standards for determining student eligibility for assessment accommodations. Criteria are outlined for evaluating whether a student with a disability is eligible for specific accommodations

on English Language Arts (ELA) and reading assessments. Guidelines are also established for alternate assessments under the Oklahoma Alternative Assessment Program (OAAP) for students with the most significant cognitive disabilities.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 13. STUDENT ASSESSMENT

210:10-13-11. Testing students with disabilities

(a) Acceptable accommodations of the general assessments of the OSTP for students with disabilities shall be:

(1) Specified in the student's individualized education plan (IEP) under the Individuals with Disabilities Education Act (IDEA); or

(2) Specified for the student served under the Americans With Disabilities Act and Section 504 of the Rehabilitation Act of 1973.

(b) Any use of test accommodations which deviate from established standardized test procedures for the general assessments of the OSTP shall be reported to the State Department of Education's Student Assessment Section. Accommodations available during testing for a student with a disability shall be only those accommodations normally employed as part of the student's classroom instruction on a regular basis. The accommodation(s) must be specified in either an IEP or a Section 504 plan.

(c) Large print and Braille versions of the tests may be utilized with students whose visual disabilities necessitate such accommodations. The Student must be utilizing large print or Braille in daily classwork as indicated on the student's IEP on file at the school district. To order large print or Braille tests, the district test coordinator shall indicate the quantities required at each grade level tested on the annual questionnaire.

(d) The score of a student who receives a read-aloud accommodation on an OSTP ELA/Reading assessment will include a notation that the ELA/Reading test read-aloud accommodation was used. The availability to a particular student of text-to-speech, human reader, or interpreter accommodations for the English Language Arts (ELA)/Reading assessments shall be determined by the following three-prong approach:

(1) The student has a specific disability that severely limits or prevents her or him from decoding text at any level of difficulty, even after varied and repeated attempts to teach the student to do so. The student is not simply reading below grade level, but is a non-reader; and

(2) The student has access to printed materials only through a reader and/or is provided with spoken text on audiotape, CD, video, or other electronic format during routine instruction, except while the student is actually being taught to decode; and

(3) The IEP team or Section 504 team will utilize the ELA/Reading Test Read-Aloud Protocol. This includes the use of the Protocol for Accommodations in Reading (PAR) or the AIM Navigator for deaf or blind students, and must be uploaded into the Nonstandard Accommodation application available on the SDE Single Sign-on for approval by the State Department of Education.

(e) The availability of a unique accommodation that requires changes or alterations to the test materials/booklets or media presentation for a student with a disability must meet the following requirements:

(1) The accommodation is required for the student to access the OSTP and is not part of the standard accommodations or provided as an accessibility feature in a computer based test.

(2) The accommodation must:

(A) Be regularly used by the student for classroom instruction;

(B) Be listed in the student's IEP; and

(C) Not alter the underlying content or construct of the assessment.

(3) The accommodation must not impact the reliability or validity of the test.

(4) The request for a nonstandard accommodation may not exempt a student from taking any portion of the OSTP tests.

(5) The request for a nonstandard accommodation must be submitted utilizing Form U and uploaded through the Nonstandard Accommodation application available on the SDE Single Sign-on for approval by the State Department of Education.

(~~d~~f) Students with severe or profound cognitive disabilities who cannot be assessed in a valid and reliable manner with the general state assessment even with accommodations, as specified in the student's IEP, shall be assessed with an appropriate alternate assessment provided by the State Department of Education. Eligibility for an alternate assessment shall be determined annually by the student's IEP team. The scores from alternate assessments shall be included in accountability calculations for the school, district, and state according to the standard procedures for calculation of academic performance targets, as specified in federal law.

(~~e~~g) Students with the most significant cognitive disabilities who are unable to participate in the regular state assessment, even with accommodations, shall participate in an Alternate Assessment Program (OAAP) and should not exceed a small percentage of the special education population. ~~The OAAP shall be designed for students who are participating in an alternative curriculum based on the Curriculum Access Resource Guide (CARG).~~

(~~f~~h) The OAAP shall consist of ~~a~~an ~~portfolio~~alternate assessment system, which may include authentic performance tasks. Alternate assessments are designed to measure academic skills within the same domains required by the regular state assessment. The content of the alternate assessment must be academic and include the major domains/strands of the content

area as reflected in state standards. The expected achievement for students is to show learning of grade referenced academic content. Alternate assessments which are portfolio based shall be scored by teams of assessors who hold at least a bachelor's degree from an accredited institution of higher education. Teams of assessors shall be supervised by an individual who has received training from the State Department of Education Office of Special Education in providing access to students with severe or profound cognitive disabilities.~~A portfolio assessment is a collection of student generated or student focused products that exhibit the alternative approach to teaching the Priority Academic Student Skills (PASS). The portfolio shall be scored by teams of teachers supervised by an individual who has received training in providing access to students with severe or profound disabilities from the Office of Special Education of the State Department of Education. If authentic performance tasks are used, teachers completing the portfolio shall be provided with information regarding these tasks during a specified time prior to the completion of the portfolio.~~

[OAR Docket #15-469; filed 6-12-15]

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

[OAR Docket #15-470]

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RULES:
Subchapter 13. Student Assessment
210:10-13-23. Emergency exemptions from assessments required by the Oklahoma School Testing Program [NEW]
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70 O.S. § 3-104; 70 O.S. § 1210.508-2; State Board of Education
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Subchapter 13. Student Assessment
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n/a
ANALYSIS:
The rule implements the requirements of 70 O.S. § 1210.508-2, which requires the State Board of Education to promulgate rules outlining a process by which a public school district or charter school may request an exemption from one or more state-mandated assessments for a student who is unable to participate during the testing window due to a documented significant medical emergency.
CONTACT PERSON:
Lori Murphy, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Telephone number: (405) 522-5260

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 13. STUDENT ASSESSMENT

210:10-13-23. Emergency exemptions from assessments required by the Oklahoma School Testing Program

(a) **Purpose.** Any public school district or public charter school may request an exemption from the administration of one or more statewide criterion-referenced tests and/or end-of-instruction exams administered pursuant to the provisions of the Oklahoma School Testing Program Act at 70 O.S. § 1210.508 et seq., for any of its enrolled students who are unable to participate in the assessment or a make-up assessment at any time during the testing window due to a documented significant medical emergency. The procedures set forth in (d) of this Section shall govern submission, processing, and evaluation of all requests for emergency exemptions submitted to the State Department of Education.

(b) **Application.** The provisions of this Section are not applicable to assessment determinations made by local school district staff, school administrators, or teachers pursuant to federal guidelines and state administrative rules. The requirements of this Section shall not interfere with the processes and procedures utilized by local school districts and charter schools to refrain from testing up to five percent (5%) of enrolled students. Such decisions shall continue to be made in accordance with local district policies and without review or approval of the State Department of Education.

(c) **Definitions.** The following words and terms, when used in this Section, shall have the following meanings:

(1) **"Immediate family member"** shall mean a parent, legal guardian, sibling, or child of the student for whom the exemption is requested.

(2) **"Significant medical emergency"** shall mean the debilitating onset of a severe or life-threatening physical or mental illness, infection, injury, disease and/or emotional trauma that meets all of the following criteria:

(A) The condition arises from an accident, disaster, crisis, or other exigent circumstances beyond the control of the student, the parents/legal guardians of the student, and the student's school or school district;
(B) The condition affects the student so severely as to incapacitate the student from participation in the assessment and corresponding make-up assessment at any time during the testing window;
(C) The condition affects the student so severely as to prevent the enrolled student from receiving instruction at school, at home, or through internet or online instruction;
(D) The student's incapacity to participate cannot be remedied with state-approved accommodations provided to the student by the school district as necessary to ensure equitable access to the assessment during the testing window; and
(E) The school or school district has been provided with written documentation of the condition that is verified in writing by a physician licensed to practice in the State of Oklahoma, or licensed in another jurisdiction and certified by an American Board of Medical Specialties (ABMS) Member Board or an American Board of Physician Specialties (ABPS) Member Board. A copy of the documentation verifying the student's condition shall be filed in the student's educational record.
(F) The term "significant medical emergency" shall not include:
(i) Short term, or minor illnesses or injuries;
(ii) Pregnancy (unless complications of a pregnancy otherwise meet the definition of a "significant medical emergency" herein);
(iii) Placement of the student in a juvenile detention or correctional facility; or
(iv) Refusal of a student or parent to participate in the assessment.
(v) The occurrence of one of the conditions listed in (F) shall not disqualify a student who is eligible for an emergency medical exemption on a different basis.
(G) Examples of situations that could be considered a "significant medical emergency" may include, but shall not be limited to conditions in which:
(i) The student is in the final stages of a terminal disease or degenerative illness, or the student has been placed in hospice care;
(ii) The student has been admitted to a hospital, infirmary, or other health care or treatment facility for the duration of the testing window that prohibits the student's secure access to the examination;
(iii) The student is comatose for the duration of the testing window;
(iv) The student has a serious chronic medical condition that will be worsened or intensified by external circumstances, and the student's physician determines that participation in the assessment could result in a significant medical emergency;
(v) The student has sustained serious mental or physical injury as a result of an accident, unintentional injury, or other catastrophic event such as:
(I) A transportation accident;
(II) A natural disaster or other event resulting in a declared state of emergency;
(III) An act of violence, including but not limited to: acts of physical assault, rape, kidnapping, homicide, torture, or terrorism;
(IV) Drowning;
(V) Poisoning, fall, or traumatic brain injury;
(VI) Fire or explosion in the student's home when the student was present;
(VII) Death or life-threatening injuries to, or significant medical emergency of, an immediate family member resulting from one of the examples in subparagraph (G).
(d) **Procedure.** Requests for emergency exemptions shall be submitted and evaluated in accordance with the following provisions:
(1) All requests for emergency exemptions shall be electronically submitted by the school district or charter school through the State Department of Education testing application no later than 5:00 p.m. of the last day of the testing window.
(2) The request for emergency exemption shall include all of the following information:
(A) A brief description of the significant medical emergency for which the exemption is requested;
(B) A brief explanation of why the emergency prevents the student's participation in the assessment;
(C) The date of the onset of the emergency;
(D) The expected or estimated duration/recovery period of the significant medical emergency;
(E) The number of days of instruction the student has missed as a result of the emergency and the number of any additional days of instruction the student is estimated or anticipated to miss after the date of submission of the exemption; and
(F) A copy of the written documentation provided by the student's physician pursuant to (c)(2)(E) of this Section.
(3) The request shall be supplemented by copies of any documentation subsequently requested by the State Department of Education necessary to document the information required by this paragraph and the definitions of "significant medical emergency" and "immediate family member" set forth in (c) of this Section.
(4) If a complete request for an emergency exemption is received during the applicable testing window, the State Department of Education will issue an approval or denial of the request and notify the school district or charter school of the determination within five (5) business days.

The school district or charter school will receive notification through the Department's electronic testing application system. Incomplete requests will not be processed until all documentation required by (c)(2) of this Section has been submitted to the State Department of Education.

(5) Requests for emergency exemptions submitted to the State Department of Education that fall outside of the provisions of 70 O.S. § 1210.508-2 and this Section may be referred to the appropriate agency and/or division within the Department and administratively closed. If the request for an emergency exemption is received during the applicable testing window, the Department will notify the school district or charter school through the electronic testing application system within five (5) business days that the request falls outside of the provisions of this Section.

(e) **Exemptions for students with disabilities.** All students receiving special education services and/or state-approved assessment accommodations must have a written IEP and/or Section 504 plan that documents how the student will participate in assessments administered pursuant to the OSTP. The existence of an IEP and/or a Section 504 plan, or the homebound status of the student, shall not be a basis for granting an exemption pursuant to this section. To qualify for an exemption, a homebound student or a student on an IEP or Section 504 plan must experience a significant medical emergency as defined in (c)(2)(A) through (c)(2)(E).

(f) **Federal and state reporting.** Any student who has received an exemption from one or more examinations in accordance with the provisions of this Section shall not be included in the calculation of the participation rate of the school and/or school district in the assessments mandated by federal and state law.

(g) **Duration.** Any request for an exemption from the administration of one or more statewide criterion-referenced tests and/or end-of-instruction tests granted pursuant to the procedures set forth in this Section shall be valid only for the current testing window in which the request was submitted.

(h) **Appeal of a denial of a medical exemption.** A request for a medical exemption that has been denied by the State Department of Education for failure to meet the criteria for "significant medical emergency" outlined in (c)(2) of this Section may be appealed to the State Board of Education in accordance with the following procedures:

(1) **Petition for appeal.** The school district or charter school in which the student is enrolled may appeal the Department's denial of a medical exemption to the State Board of Education. The parent or legal guardian of a student, an individual who has been issued letters of guardianship of the person of a student pursuant to the Oklahoma Guardianship and Conservatorship Act, or an adult who has assumed permanent care and custody of a student in accordance with local district policies and applicable state law must grant permission to the school district or charter school to file a petition for appeal to the State Board of Education. Parental consent shall be provided in writing and shall be documented by the requesting school district or charter school.

(2) **Filing requirements.** A petition for appeal must comply with the following requirements:

(A) **Time of filing.** The petition for appeal must be submitted in writing to the Secretary of the State Board of Education within ten (10) business days after the date the school district receives notice of the Department's denial of the medical exemption.

(B) **Method of filing.** Petitions for appeal may be submitted to the Secretary of the State Board of Education in person or by mail. A petition submitted by mail will be accepted as timely if the mailing envelope contains a postmark dated on or before the date of the filing deadline.

(C) **Verification of a petition for appeal.** The petition for appeal must be signed by the school Superintendent or the school Superintendent's designee, or charter school administrator or designee, for the purpose of verifying that, to the best of the individual'sknowledge, the information submitted in the appeal is accurate and correct.

(D) **Acceptance of a petition for filing.** Upon receipt of the petition for appeal, the Secretary of the Board of Education shall file the petition and obtain copies of all records and information submitted by the school district or charter school to the State Department of Education pursuant to (c) of this Section. Copies of agency records and additionaldocumentation submitted in the petition for appeal shall be provided to members ofthe State Board of Education for consideration. Only timely filed petitions for appealshall be brought to the State Board of Education for consideration. The Board shalltake action on the petition no later than twenty (20) calendar days after the date of thereceipt of a timely filed petition.

(3) **Review of petitions.** Because the privacy of individual student data is protected by the Family Educational Rights and Privacy Act (FERPA) and Oklahoma's Student Data Accessibility, Transparency, and Accountability Act, the State Board of Education shall review petitions for appeal in executive session as authorized by 25 O.S. § 307 (A)(7).The State Board of Education shall evaluate each petition for appeal based on the following criteria to determine whether a "significant medical emergency" exists ascontended by the appealing school district or charter school:

(A) The applicability of the criteria outlined in (c)(2) of this section related to the determination of a "significant medical emergency";

(B) The severity of the exigent circumstances giving rise to the student's condition;

(C) The extent of the student's incapacitation;

(D) The projected efficacy of allowable testing accommodations; or

(E) The existence of newly discovered documentation or newly availableinformation that significantly and substantively reflects on the student's mentaland/or physical state of being.

(4) **Actions on a petition for appeal.** After review of the petition for appeal in accordance with (h)(3) of this section, the State Board of Education shall take action on a petition for appeal based on the merits of the information provided in the written appeal.

(A) The Board shall consider each petition for appeal on an individual basis and shall issue an approval or denial of the request for an emergency exemption.

(B) The Secretary of the Board shall notify the school district or charter school and the State Department of Education in writing of the Board's determination.

(C) The State Department of Education shall document each determination in the testing application to maintain an accurate agency record of each request for an emergency exemption.

(D) Requests for student medical exemptions granted by the State Board of Education will be processed pursuant to (f) and (g) of this Section. Students denied medical exemptions by the State Board of Education will be included in the calculation ofthe participation rate of the school and/or school district in the assessments mandated by federal and state law.

[OAR Docket #15-470; filed 6-12-15]

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

[OAR Docket #15-471]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 4. Common Core State Standards [REVOKED]
210:15-4-1. Purpose [REVOKED]
210:15-4-2. Definitions [REVOKED]
210:15-4-3. Adoption and implementation [REVOKED]
AUTHORITY:
70 O.S. § 3-104; 70 O.S. § 11-103.6a; State Board of Education
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
September 25, 2014
COMMENT PERIOD:
October 15, 2014 through November 21, 2014
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December 18, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
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Approved by Governor's Declaration on June 8, 2015
FINAL ADOPTION:
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August 27, 2015
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 4. Common Core State Standards [REVOKED]
210:15-4-1. Purpose [REVOKED]
210:15-4-2. Definitions [REVOKED]
210:15-4-3. Adoption and implementation [REVOKED]
Gubernatorial approval:
July 31, 2014
Register publication:
32 Ok Reg 5
Docket number:
14-841
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The revocation of these three rules regarding Common Core curriculum standards is explicitly required by House Bill 3399's amendments to 70 O.S. § 11-103.6a.
CONTACT PERSON:
Lori Murphy, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Telephone number: (405) 522-5260

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 4. COMMON CORE STATE STANDARDS [REVOKED]

210:15-4-1. Purpose [REVOKED]

~~The rules of the Subchapter have been adopted for the purpose of adopting and implementing the Common Core State Standards as developed by the National Governors Association Center for Best Practices and the Council of Chief State School Officers as part of a multi state initiative to increase the rigor and comparability of state standards to meet the desired levels of competencies for students in public schools according to 70 O.S. § 11-103.6 and to review and revise core curriculum requirements according to provisions of 70 O.S. § 11-103.6(a).~~

210:15-4-2. Definitions [REVOKED]

~~The following words and terms, when used in this Subchapter, shall have the following meaning:~~

~~**"Common Core State Standards"** means the standards and expectations developed and/or revised by the National Governors Association Center for Best Practices and the Council of Chief State School Officers.~~

~~**"English Language Arts"** means the set of Common Core State Standards developed and/or revised for grades K-12 including reading (foundational skills, reading literature, and reading informational text), writing, speaking and listening, and language.~~

~~**"Literacy in History/Social Studies and Science"** means the set of Common Core State Standards developed and/or revised for grades 6-12 including reading standards for history/social studies, reading standards for science, and writing standards for history/social studies and science.~~

~~**"Mathematics"** means the set of Common Core State Standards developed and/or revised for grades K-12 including number (counting and cardinality, operations and the problems~~

~~they solve, base ten, and fractions), measurement and data, geometry, ratios and proportional relationships, the number system, expressions and equations, functions, statistics and probability, High School number and quantity, High School algebra, High School functions, High School modeling, High School probability and statistics, and High School geometry.~~

210:15-4-3. Adoption and implementation [REVOKED]

~~(a) The Common Core State Standards in English Language Arts, Literacy in History/Social Studies and Science, and Mathematics shall be adopted and implemented as follows:~~

~~(1) Effective immediately, the Common Core State Standards in English Language Arts, Literacy in History/Social Studies and Science, and Mathematics are adopted by the State of Oklahoma;~~

~~(2) Beginning with the 2010 2011 school year, the school districts of the state shall develop and begin implementing a plan for transitioning from the Priority Academic Student Skills to full implementation of the Common Core State Standards in English Language Arts, Literacy in History/Social Studies and Science, and Mathematics as described in (b) of this rule by the 2014 2015 school year or the school year in which common assessments aligned to the Common Core State Standards will be available, whichever is later;~~

~~(3) Beginning with FY 2011, the Oklahoma State Department of Education shall pursue participation in consortia of states, as appropriate, to develop common assessments aligned to the Common Core State Standards; and~~

~~(4) The Priority Academic Student Skills shall remain as the assessed standards until such time that full implementation of the Common Core State Standards are required and common assessments aligned to those standards are available.~~

~~(b) By the 2014 2015 school year or the school year in which common assessments aligned to the Common Core State Standards will be available, whichever is later, the Common Core State Standards in English Language Arts, Literacy in History/Social Studies and Science, and Mathematics shall be fully implemented by replacing or being added to the Priority Academic Student Skills as follows:~~

~~(1) English Language Arts for grades K-12 shall replace the Priority Academic Student Skills in Language Arts for grades K-12 with the provision that the State Board of Education reserves the right to add up to 15 percent additional standards to the Common Core State Standards as appropriate;~~

~~(2) Literacy in History/Social Studies and Science for grades 6-12 shall be added to the Priority Academic Student Skills in:~~

~~(A) World studies for grade 6, world geography for grade 7, and United States History 1760-1877 for grade 8;~~

~~(B) Economics for high school, Oklahoma history for high school, United States government for high school, United States History 1850 to the Present for high school, world geography for high school, and World History for high school;~~

~~(C) Inquiry, physical, life, and earth/space science for grades 6-8; and~~

~~(D) Biology I, Chemistry, and Physics; and~~

~~(3) Mathematics for grades K-12 shall replace the content and process standards of the Priority Academic Student Skills in:~~

~~(A) Mathematics for grades K-8 with the provision that the State Board of Education reserves the right to add up to 15 percent additional standards to the Common Core State Standards as appropriate; and~~

~~(B) Algebra I, Algebra II, and Geometry with the provision that the State Board of Education reserves the right to add up to 15 percent additional standards to the Common Core State Standards as appropriate, provided that a committee of Oklahoma stakeholders assembled by the State Department of Education has separated the Common Core State Standards for high school mathematics into appropriate courses.~~

~~(c) At any point in time that the National Governors Association Center for Best Practices and the Council of Chief State School Officers or any other consortia of which Oklahoma is a member and that represents the best interests of a majority of states reviews or revises the Common Core State Standards in English Language Arts, Literacy in History/Social Studies and Science, or Mathematics, these revisions shall be adopted, effective immediately upon approval of the State Board of Education, and implemented through a transition process similar to that described in (a)(2) with full implementation by the school year in which common assessments aligned to those revisions are available.~~

~~(d) At any point in time that the National Governors Association Center for Best Practices and the Council of Chief State School Officers or any other consortia of which Oklahoma is a member and that represents the best interests of a majority of states develops Common Core State Standards in any additional content areas, these standards shall be reviewed and adopted by the State Board of Education as appropriate, and implemented through a transition process similar to that described in (a)(2) with full implementation by the school year in which common assessments aligned to those standards are available.~~

[OAR Docket #15-471; filed 6-12-15]

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

[OAR Docket #15-472]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 13. Special Education
210:15-13-7. Lindsey Nicole Henry Scholarship for Students with Disabilities Program [AMENDED]

AUTHORITY:
70 O.S. § 3-104; 70 O.S. §§ 13-101.1 et seq.; State Board of Education
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 23, 2014
COMMENT PERIOD:
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Approved by Governor's declaration on June 8, 2015
FINAL ADOPTION:
June 8, 2015
EFFECTIVE:
August 27, 2015
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The amendments update the rule to reflect statutory changes to the Lindsey Nicole Henry Scholarship for Students with Disabilities Program resulting from House Bill 2414. The amendments provide for the eligibility of students with disabilities who have been served under an Individual Family Service Plan (IFSP) through the SoonerStart program, and have been evaluated and determined eligible for public school special education services although they have not yet attended school. The amendments also outline payment procedures which have changed by statute, and include the updated statutory deadline for applications to the program.
CONTACT PERSON:
Lori Murphy, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Telephone number: (405) 522-5260

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 13. SPECIAL EDUCATION

210:15-13-7. Lindsey Nicole Henry Scholarship for Students with Disabilities Program

(a) **Scholarship Requests.** ~~When a parent of an eligible student requests a scholarship, they must notify the district of residence. The district of residence is defined as the legal district of residence, unless the child is a child with an IEP who has been on a transfer of any kind for three consecutive years, in which case the district is then defined as the receiving district, as required by 70 O.S. 13-103(d). If a child is on a transfer of any kind, that does not meet the three year rule, and accepts the scholarship, the transfer is effectively terminated.~~The parent or legal guardian of an eligible student with disabilities who has been admitted to an approved private school may request a Lindsey Nicole Henry Scholarship from the Oklahoma State Department of Education.

(1) A complete Lindsey Nicole Henry Scholarship for Students with Disabilities Application and all required documentation must be submitted by mail or fax to the State Department of Education by December 1 of the year that the scholarship is being requested for. Scholarship requests received after December 1 shall be eligible for consideration, but funding for scholarship requests received after December 1 shall not be available until the beginning of the following school year.

(2) Upon receipt of a Lindsey Nicole Henry Scholarship request, the State Department of Education shall notify the school district of residence.

(3) All recipients of the Lindsey Nicole Henry Scholarship must submit a renewal request for the scholarship each year, by submitting a current Lindsey Nicole Henry Scholarship for Students with Disabilities Application to the State Department of Education. Renewal requests should be submitted in June or July prior to the beginning of the academic year for which the scholarship renewal is requested. If the application is received after the beginning of the school year, the scholarship will be prorated according to the date the renewal request is approved. If a renewal application is not submitted by December 1, the scholarship will be terminated.

(4) If the required annual renewal requests and all other required documentation are submitted to the State Department of Education as provided for in this section and in 70 O.S. § 13-101.2, the scholarship shall remain in force until the student returns to a public school, graduates from high school, or reaches the age of twenty-two (22), whichever occurs first.

(5) Acceptance of a Lindsey Nicole Henry Scholarship shall have the same effect as a parental revocation of consent under the Individuals with Disabilities Education Act (IDEA).

(b) **Payments.** ~~Payments will be made to the private school on a quarterly basis upon verification of continued enrollment and attendance at the private school. Payments will be made in arrears, following the completion of each quarter. The payments will be made after the private school provides the public school with a quarterly attendance record for each child receiving the scholarship.~~ Payment of scholarship funds shall be made by the State Department of Education with an individual warrant made payable to the participating student's parent or guardian, and mailed by the Department to the private school where the student is enrolled.

(1) Upon issuance of a Lindsey Nicole Henry Scholarship warrant, the parent or legal guardian to whom the warrant is made shall restrictively endorse the warrant to the private school for deposit into the account of the private school.

(2) The initial payment shall be made after the State Department of Education verifies acceptance and enrollment at the approved private school. Quarterly payments shall be made upon verification of continued enrollment and attendance at the private school.

(3) The parent or legal guardian may not designate any entity or individual associated with the private school as

the attorney in fact for the parent or legal guardian to endorse a warrant. Failure to comply with this subsection will result in forfeiture of the scholarship.

(c) **Private School Eligibility.** In order to be eligible to accept students on the scholarship, private schools must be accredited by the State Board of Education or another accrediting association approved by the State Board of Education, and meet all other requirements for participating private schools as listed in 70 O.S. § 13-101.2. ~~Only school districts within the state of Oklahoma can be accredited by the State Board of Education.~~ No out of state schools are eligible to participate in the scholarship program. The State Department of Education shall maintain a list of private schools that have been determined to be eligible to participate in the Lindsey Nicole Henry scholarship program, to be posted on the State Department of Education website and updated each time a school is added to or removed from the program. Scholarship requests shall only be considered when the parent of an eligible student submits documentation that the student has been admitted to a school that has been approved as of the date the scholarship request is received by the State Department of Education.

(d) **Student Eligibility.** To be eligible for a Lindsey Nicole Henry Scholarship, a student must meet all of the following criteria:

(1) Has been identified as a student with a disability, and has had an individualized Education Program (IEP) developed in accordance with the Individuals with Disabilities Education Act (IDEA);

(2) Has an IEP in effect at the time the scholarship request is received by the State Department of Education;

(3) Has been accepted by a private school approved by the State Department of Education for participation in the Lindsey Nicole Henry scholarship program; and

(4) Falls within one of the following three categories:

(A) Has spent the prior school year in attendance at a public school in Oklahoma; or

(B) Is the child of a member of the United States Armed Forces who transfers to a school in Oklahoma from another state or from a foreign country pursuant to a permanent change of station orders; or

(C) Has been provided services under an Individual Family Service Plan (IFSP) through the SoonerStart program, and during transition was evaluated and determined to be eligible for school district services.

(~~d~~e) **Amount of Scholarship.** ~~Within ten business days of receipt by the public school district of the parental request, the State Department of Education must receive from the public school a request form for a determination of the calculation of the maximum scholarship amount. The State Department of Education must provide the calculation of the maximum amount of the scholarship to the public school in writing within fifteen business days of the receipt of the request. The parent shall be notified in writing by the district of the maximum amount of the scholarship in a timely manner, not to exceed thirty business days from the date of the parents' original request. Scholarship amounts will be calculated at the time of the parental request and will not change during the course of the school year regardless of a school district's mid-year adjustments. The amount of the scholarship will be calculated annually as required by 70 O.S. 13-101.1, Section 2(F)(1).~~ The maximum scholarship granted for an eligible student with disabilities shall be equivalent to the total State Aid factors for the applicable school year multiplied by the grade and disability weights generated by that student for the applicable school year.

(1) The disability weights used in calculating the scholarship amount shall include all disability weights which correspond to the disabilities included in the multidisciplinary evaluation and eligibility group summary (MEEGS) for the student at the time the request for a scholarship is made by the parent or legal guardian.

(2) The maximum scholarship amount shall be calculated by the State Board of Education for each year the student is participating in the Lindsey Nicole Henry Scholarship program.

(3) Within ten (10) days after receiving a scholarship request, the State Department of Education shall notify the participating private school of the amount of the scholarship, provided the total State Aid factors have been determined for the current fiscal year.

(e~~f~~) **Tracking.** ~~School districts providing scholarships shall annually report for child count and funding purposes, all students who are attending a private school under the scholarship program to the State Department of Education. Students must be reported as Lindsey Nicole Henry Scholarship Students on both the Special Education Child Count and the First Quarter Statistical Report (FQSR) and the Annual Statistical Report (ASR). These~~ Lindsey Nicole Henry ~~scholarship~~Scholarship students ~~will~~shall~~also~~ be tracked through the ~~WAVE.~~computerized record system used by the State Department of Education.

[OAR Docket #15-472; filed 6-12-15]

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

[OAR Docket #15-473]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 13. Special Education
210:15-13-8. High Needs Risk Pool [NEW]
AUTHORITY:
70 O.S. § 3-104; 20 U.S.C. § 1411(e); State Board of Education
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 23, 2015
COMMENT PERIOD:
February 17, 2015 through March 19, 2015
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SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 30, 2015

APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 8, 2015.
FINAL ADOPTION:
June 8, 2015
EFFECTIVE:
August 27, 2015
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The rule expresses the State Department of Education's policies regarding the distribution of funding reserved to reimburse school districts for costs incurred providing services to high needs students with disabilities. The Individuals with Disabilities Education Act (IDEA) authorizes states to create a high needs risk pool to set aside a portion of IDEA funds reserved for state-level activities to reimburse local educational agencies for providing services to high needs students, and establishes guidelines state programs must follow. The rule articulates federal requirements for the program as well as the State Department of Education's program policies.
CONTACT PERSON:
Lori Murphy, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Telephone number: (405) 522-5260

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 15. SPECIAL EDUCATION

210:15-13-8. High Needs Risk Pool

(a) **Purpose and scope.** As authorized by 20 USC § 1411(e), the State Department of Education sets aside a portion of the funds reserved for state-level activities under the Individuals with Disabilities Education Act (IDEA) for the purpose of reimbursing local educational agencies (LEAs) for costs expended in educating high need students with disabilities. Under the program, a "high need" student:

(1) Has been identified as eligible for special education and related services; and

(2) Has special education and related service needs that exceed the typical needs of a student with a disability in terms of the intensity, frequency, and diversity of needs; and

(3) Is identified in a disability category/categories that makes the LEA eligible for reimbursement for at least three times the average per pupil expenditure for the child; and

(4) Requires intensive special education and related services, to an extent that serving the student presents a significant impact on the financial resources of the LEA that is likely to impair the LEA's ability to provide required educational programs to other students.

(b) **Criteria for participation by districts.** To be eligible for reimbursement for excessive costs incurred in educating a high need student, an LEA must:

(1) Submit a properly completed application, provided by the State Department of Education (SDE), within the annual time frame established by the SDE.

(2) Provide documentation as requested to the State Department of Education that mayinclude, but is not limited to:

(A) Copies of any contracts for services;

(B) Invoices and payment records;

(C) The student's individualized education program (IEP);

(D) Payroll records; and

(E) Invoices for all instructional supplies and equipment associated specifically with the special education program and related services provided to the high need student.

(3) Seek reimbursement only for appropriately incurred costs that exceed three times the state average per pupil expenditure, as calculated annually. The total cost of all high needs students in the LEA must be at least ten percent (10%) of the LEA's previous year's IDEAFlow-Through allocation. Appropriately incurred costs are those associated with providing direct special education instructional and related services to the students.

(A) Appropriately incurred costs include, but are not limited to:

(i) One-to-one assistance;

(ii) Extended school year (ESY) services;

(iii) Specially trained related services providers;

(iv) Public or private day programs;

(v) Specialized equipment or materials specific to the student;

(vi) Transportation costs specific to the high need student and identified in the IEP;

(vii) Contracted services; and/or

(viii) Approved out-of-state residential treatment facility services.

(B) The costs eligible for reimbursement shall not include:

(i) Non-extraordinary nursing costs;

(ii) Indirect costs;

(iii) Administrative or leadership costs associated with the provision of services to the student;

(iv) Legal fees, court costs, or other costs associated with a cause of action brought on behalf of a student with a disability to ensure a free appropriate public education (FAPE); or

(v) Transportation costs not specific to the high needs student.

(c) **Ensuring placements comply with federal requirements.** To ensure compliance with federal standards and provide high need students with access to a FAPE, all OOS placements must comply with the provisions of 34 CFR 300.114 through 34 CFR 300.118, including but not limited to the following requirements:

(1) The State Department of Education must ensure that a continuum of alternative placements is available to

meet the needs of children with disabilities for special education and related services. This continuum shall include instruction available in regular classes, special classes, special schools, at home, and in hospitals and institutions.

(2) Because a child with a disability has the right to be educated in the least restrictive environment (LRE), the placement of a high needs student at an OOS residential facility is only appropriate if the nature or severity of the child's disability is such that education cannot be satisfactorily achieved in regular classes with the use of supplementary aids and services, or in another less restrictive environment.

(3) In determining the educational placement of a child with a disability, the placement decision must be made by a group of persons including the parent(s) or guardian(s) and otherpersons knowledgeable about the child, the meaning of the evaluation data, and the placement options. The child's placement must be considered at least annually, be based onthe child's IEP, and be as close as possible to the child's home.

(d) **Tier I funding.** Tier I of the High Needs Risk Pool offers funding on a reimbursement basis for OOS residential placements.

(1) If a student's IEP team determines that an OOS residential placement is necessary to meet the student's education needs, the student's LEA may apply to the State Department of Education for a Tier I funding reimbursement.

(2) Before receiving Tier I funding, it is the responsibility of the LEA to enter into a formal contractual agreement with the OOS residential facility where the child will be placed. The contractual agreement shall include a provision that notice must be provided in writing to all parties at least thirty (30) days prior to the termination of a placement. Upon receiving a copy of the completed agreement, the State Department of Education will make the appropriate percentage of funds available to the LEA on a reimbursement basis. The LEA shall send quarterly copies of the student's progress reports provided by the OOS residential facility to the SDE on a regular basis.

(3) Tier I funds will be awarded on a sliding scale to qualifying LEAs on a priority basis, demonstrated by documented need, until $1.5 million (60% of the annual provision for High Needs Risk Pool funds) has been obligated for the ensuing school year. Once this amount has been obligated, no more funds for Tier I requests will be available during that fiscal year for OOS residential placements.

(4) An LEA receiving reimbursement funds for a Tier I OOS residential placement must send written notification to the State Department of Education within five (5) business days in the event the high needs student's IEP team decides to terminate an OOS placement.

(5) If the terms of an OOS placement are violated by the LEA, the OOS residential facility, or the parent/student, the SDE will send written notification to the LEA, the OOS facility, and the parent/guardian of the student that the placement has been terminated. All notices that will change the placement of a student in an OOS residential placement must be provided in writing at least thirty (30) days prior to dismissal of the student from the OOS facility.

(6) LEAs that are denied Tier I reimbursement funds because of a lack of available funds will be notified in writing and their request data will be added to a database in the order the applications were received. When Tier I funds become available, these LEAs will be notified in writing within thirty (30) days of available funding on a first come, first served basis. This will include notification of any OOS placement opening that may occur before the end of the school year due to cancellation. The LEA Tier I request data will remain active in the database until the district no longer requires the reimbursement option for the high need student.

(e) **Tier II funding.** Tier II of the High Needs Risk Pool includes funding for all other high need students whose education needs result in excessive costs to the LEA. After all Tier I funding has been obligated for the school year, the remaining $1 million (40% of the annual provision for High Needs Risk Pool funds) will be available for Tier II funding requests only. All qualifying LEAs will be awarded Tier II funding, at a prorated rate if necessary, until the remaining 40% of the High Needs Risk Pool funds are depleted.

(f) **Application timelines and notification of award status.** The following procedures will apply to applications for reimbursement from the High Needs Risk Pool.

(1) **Tier I applications.** The State Department of Education will begin accepting applications for Tier I funding on October 1 of each fiscal year. To be eligible for consideration, an LEA seeking reimbursement for Tier I expenses must submit a properly completed application and all supporting documentation annually, by the last Friday in July.

(2) **Tier II applications.** An LEA seeking reimbursement for Tier II expenses must submit a properly completed application and all required supporting documentation annually by the second Friday in July. All properly completed high needs reimbursement applications received in a timely manner will be reviewed to determine if the unique qualities of the high need student related to intensity and diversity of services are in excess of the typical needs of a student with a disability. An LEA applying for reimbursement from the High Needs Risk Pool will receive a formal written notification of award status after careful review by the State Department of Education.

[OAR Docket #15-473; filed 6-12-15]

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

[OAR Docket #15-474]

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Subchapter 34. Supplemental Online Course Procedures
210:15-34-1. General Provisions [AMENDED]
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The amendment strikes a reference to the Common Core State Standards, as directed by 70 O.S. § 11-103.6a(I).
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 34. SUPPLEMENTAL ONLINE COURSE PROCEDURES

210:15-34-1. General provisions

(a) **Purpose.** The purpose of this program is to make supplemental learning opportunities available to local school district students using online technology in a nontraditional classroom setting, (i.e., inside or outside of public school site locations). The supplemental online course enrollment options are for public school students enrolled in the district. This rule establishes policies and procedures as directed by 2011 Senate Bill 280, which amends Oklahoma Statute Title 70, Section 1-111.

(b) **General Information.** The Oklahoma Supplemental Online Course Program (hereafter referred to as OSOCP), establishes a framework for districts to offer supplementary online courses to any public student residing in Oklahoma. All OSOCP teachers shall be: 1) appropriately certified in accordance with Oklahoma Administrative Rule 210:35-21-2 to teach in the content area of the course offered, or 2) a faculty member at an accredited institution of higher education, possessing the specific content expertise necessary to teach the course. All courses offered through OSOCP shall be aligned with Oklahoma's Priority Academic Student Skills (PASS) ~~curriculum~~ standards~~.and/or Common Core State Standards (CCSS).~~ Local districts have control regarding the method by which they deliver online courses to enrolled students.

(c) **Definitions.**

(1) **Supplemental online course.** An online program that allows students who are enrolled in a public school to supplement their education by enrolling part time in online courses that are educationally appropriate for the student, which are equal to the equivalent of classroom instruction time required for student attendance and participation by the district.

(2) **Educationally appropriate.** For the purposes of supplemental online courses, "educationally appropriate" means any instruction that is not substantially a repeat of a course or portion of a course that the student has successfully completed, regardless of the grade of the student, and regardless of whether a course is similar to or identical to the instruction that is currently offered in the school district. The determination of educationally appropriate will be made at local district level.

[OAR Docket #15-474; filed 6-12-15]

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

[OAR Docket #15-475]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 35. English Language Learner Programs [NEW]
210:15-35-1. Definitions [NEW]
210:15-35-2. Responsibilities of school districts [NEW]
210:15-35-3. Assessments [NEW]
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ANALYSIS:
The rules in the new subchapter set out guidelines for providing services to English Language Learner (ELL) students in Oklahoma school districts. The rules establish definitions, address the responsibilities of school districts to identify and provide services to ELL students, and specify how ELL students are to be included in assessment programs.
CONTACT PERSON:
Lori Murphy, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Telephone number: (405) 522-5260

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 35. ENGLISH LANGUAGE LEARNER PROGRAMS

210:15-35-1. Definitions

The following terms, when used in this subchapter and related State Department of Education materials, shall have the following meanings unless the context clearly indicates otherwise:

"Bilingual" means a student whose Home Language Survey (HLS) indicates that a language other than English is spoken in the student's home, and:

(A) The HLS indicates that a language other than English is spoken in the home "more often" than English; or

(B) The HLS indicates that a language other than English is spoken in the home "less often" than English, and one of the following three factors applies:

(i) The student scores 35% or below on the composite reading score on a norm-referenced test (NRT);

(ii) The student scores "limited knowledge" or "unsatisfactory" on an Oklahoma Core Curriculum Test (OCCT) in reading; or

(iii) The student is designated English Language Learner/Limited English Proficient on an Oklahoma English language proficiency test, including the WIDA ACCESS for English Language Learners Test, a WIDA Placement Test (K W-APT, W-APT, or Kindergarten MODEL), or the Oklahoma Pre-K Language Screening Tool.

"English Language Learner" means an individual:

(A) Who is aged three (3) through twenty-one (21);

(B) Who is enrolled or preparing to enroll in an elementary school or secondary school;

(C) Who:

(i) was not born in the United States or whose native language is a language other than English; or

(ii) is a Native American or Alaska Native, and who comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or

(iii) is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and

(D) Whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual

(i) The ability to meet the state's proficient level of achievement on state assessments; or

(ii) The ability to successfully achieve in classrooms where the language of instruction is English; or

(iii) The opportunity to participate fully in society.

"Home Language Survey" (HLS) means a survey that must be conducted in regard to every student, which asks the following:

(A) Is a language other than English used in the student's home?

(B) If a language other than English is used in the student's home, is it spoken more often or less often than English?

"Immigrant children and youth" means individuals who:

(A) Are aged three (3) through twenty-one (21);

(B) Were not born in any U.S. state, the District of Columbia, or Puerto Rico; and

(C) Have not been attending one or more schools in any U.S. state(s), the District of Columbia, or Puerto Rico for more than three (3) full academic years.

"Language Instruction Educational Plan" or **"LIEP"** means an individualized education plan designed to address the specific needs of an ELL student.

"Limited English proficient" means "English Language Learner", as defined in this section.

210:15-35-2. Responsibilities of school districts

(a) **Identification of ELL students.** Pursuant to federal law, school districts are required to implement procedures for identifying English Language Learner (ELL) students.

(1) **Timeframe.** Identification, screening, and parental notification of ELL students eligible for language assistance services shall occur within thirty (30) days of the beginning of the school year. For students who transfer to a district during the school year, identification as an ELL student eligible for language assistance services and parental notification shall occur within two weeks of enrollment.

(2) **Home Language Survey.** Each school is required to conduct a home language survey in regard to every student, which requests from the student's parent or guardian only the following information:

(A) What the native language of the student is;

(B) What language is spoken most often by the student; and

(C) What language is spoken by the student in the home.

(3) **Screening tools.**

(A) A student in an early childhood education program whose Home Language Survey indicates that another language is spoken in the home, either "more often" or "less often" than English, shall be assessed using the ELL Pre-K Screening Tool. A student who scores 7/10 or higher on the Pre-K Screening Tool is deemed ineligible for language assistance services. A student who scores 6/10 or lower on the Pre-K Screening Tool is deemed eligible for language assistance services.

(B) A kindergarten student or a student in the first semester of first grade whose Home Language Survey indicates that another language is spoken in the home, either "more often" or "less often" than English, shall be screened with the Kindergarten WIDA ACCESS Placement Test (W-APT). All Kindergarten students assessed with the W-APT qualify for language assistance services and should be given the ACCESS for ELLs annual assessment. A student in the first semester of first grade will qualify for services if they score a 28 or below on Listening/Speaking, a 12 or below on Reading, or a 14 or below on Writing.

(C) A student in the second semester of first grade whose Home Language Survey indicates that another language is spoken in the home, either "more often" or "less often" than English, shall be screened with the W-APT (Cluster 1-2). A student in the second semester of first grade will qualify for services if they score a Grade Adjusted Composite Proficiency Level of 4.9 or below, or a Grade Adjusted Literacy Composite Proficiency Level of 4.4 or below.

(D) A student in grades two (2) through twelve (12) whose Home Language Survey indicates that another language is spoken in the home, either "more often" or "less often" than English, shall be screened with the W-APT. A student in second through twelfth grade will qualify for services if they score a Grade Adjusted Composite Proficiency Level of 4.9 or below, or a Grade Adjusted Literacy Composite Proficiency Level of 4.4 or below.

(b) **English language acquisition program.** Every school district must provide an evidence-based English language acquisition program for students identified as ELLs. A school district may participate in a consortium to provide an appropriate English language acquisition program to ELL students of member districts.

210:15-35-3. Assessments

(a) **Inclusion of ELL students in state academic content assessments.** An ELL student must be included in the state academic assessment system immediately upon enrollment, and shall participate in assessments administered under the Oklahoma School Testing Program (OSTP). A student may not be excluded from participation in OSTP assessments based on English proficiency status, with the exception that an ELL student who has attended school in the United States for less than twelve (12) months may receive a one-time exemption for the OSTP Reading test in grades three (3) through eight (8), or the English EOI II/III. This one-time exception does not waive ACE graduation requirements.

(b) **Accommodations for ELL students taking state academic content assessments.** While ELL students must participate in content assessments required under the OSTP, an ELL student may qualify for a test accommodation based on limited English proficiency. Test accommodations for ELL students may be either linguistic (direct) or nonlinguistic (indirect), and are intended to increase the likelihood that English Language Learners are tested on their knowledge of the subject content rather than their proficiency in English. Decisions concerning OSTP accommodations for an ELL student shall be made by the Language Instruction Educational Plan (LIEP) committee, or the district or consortium equivalent.

(1) **Eligibility.** An individual ELL student is eligible for testing accommodations only when all of the following factors apply:

(A) The student has a primary language other than English and is not proficient in listening, speaking, reading, writing, or comprehension in an English-speaking classroom;

(B) The student routinely uses the accommodation during classroom instruction andassessment in the subject, both before and after the OSTP test is administered;

(C) The accommodation must be documented on the student's current LIEP or locally designed equivalent plan;

(D) The accommodation must be among those approved by the State Department of Education; and

(E) The student requires the accommodation in order to participate in OSTP testing.

(2) **Impermissible accommodations.** An ELL test accommodation may not:

(A) Alter, explain, simplify, paraphrase, or eliminate any test question, reading passage, writing prompt, or multiple-choice answer option;

(B) Provide verbal clues or other suggestions that hint at or give away the correct response to the student; or

(C) Contradict test administration requirements or result in the violation of test security, including but not limited to modifying, reordering, or reformatting test questions or altering, enlarging, or duplicating tests.

(c) **Accommodations for ELL students with disabilities.** For an ELL student who is also identified as a student with disabilities, any testing accommodations other than the ELL supports addressed in subsection (b) must be based on the student's disability and documented in the student's IEP or Section 504 Plan.

(d) **English language proficiency assessments.** The English language proficiency of every ELL student shall be assessed annually using the ACCESS for ELLs test, which shall measure ELL students' oral language, reading, and writing skills in English. Any testing accommodations provided to an ELL student with a disability must be based on the student's disability and documented in the student's IEP or Section 504 Plan.

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TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 20. STAFF

[OAR Docket #15-476]

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Part 9. Teacher Certification
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ANALYSIS:
The amendments provide that if a teaching or professional certificate has been expired for one (1) year or more, the certificate holder applying for renewal must undergo a new criminal history record check under the terms of 70 O.S. § 5-142. The amendments will ensure that applicants who have committed disqualifying crimes in the time since their original certification are not re-certified.
CONTACT PERSON:
Lori Murphy, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Telephone number: (405) 522-5260

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 9. PROFESSIONAL STANDARDS: TEACHER EDUCATION AND CERTIFICATION

PART 9. TEACHER CERTIFICATION

210:20-9-96. Requirements for renewal or reissuance of certificates

(a) **Standard certificate.**

(1) To renew a standard certificate a teacher must submit the appropriate application, pay the appropriate processing fee specified in subsection 210:20-9-9 (d) and complete one of the following options:

(A) Option I--the applicant shall have completed a minimum of three (3) years of school experience in an accredited school during the five (5) year validity of the standard certificate. Applicants who have completed fewer than three (3) years of school experience may substitute coursework in professional education and/or specialization from an accredited college or university for each year of experience they are lacking at the following rate: with two (2) years of experience, complete three (3) semester hours; with one (1) year of experience, complete four (4) semester hours; or with zero (0) years of experience, complete five (5) semester hours. College credit must be completed within the five (5) year period immediately preceding the date of application for renewal. Teachers who teach one-half day in an accredited school each school year for the five (5) year validity period of their certificate may renew a standard certificate. The following provisions apply if the certificate has been expired more than five (5) years: If the certificate has been expired for more than five years and the teacher was certified in and teaching in another state and has three years of experience within the five year period immediately preceding the date of application for renewal the experience will apply toward renewal.

(B) Option II--a teacher or administrator who is not employed as a teacher or administrator and holds a valid Oklahoma Standard Teaching Certificate may satisfy requirements for renewal of the Standard Teacher Certificate by completing seventy-five (75) points in professional development programs, conferences and seminars approved by a public school

district. A combination of professional development points, higher education credits and/or teaching experience may also be used for renewal of a valid standard teaching certificate. Only programs, conferences and seminars recognized for professional development credit by an Oklahoma public school district at the time the teacher attends the programs, conferences or seminars may be used to fulfill the renewal requirement. The individual seeking certification renewal is responsible to maintain his/her professional development attendance forms to submit to the State Department of Education. Exact combinations of professional development points, college credit hours and years of teaching experience will be determined by the Professional Standards Section of the State Department of Education.

(C) Option III--Issue a two-year certificate immediately and then complete the following requirement. Successful employment for one year in an Oklahoma accredited school or accredited college or university. An administrator will provide supervision and a teacher or appropriate colleague will provide assistance as needed. Ultimately, certification is contingent on the district or college/university-level evaluation of the candidate.

(2) School experience, for purposes of renewing a standard certificate, is experience as a teacher, supervisor, or administrator in a school, college, or university accredited by either a state board of education or state board of regents.

(3) If a standard certificate has been expired for one (1) year or more, the applicant must undergo a new criminal history record check, as provided for at 70 O.S. § 5-142. Applicant is responsible for any fees associated with the criminal history record check.

(b) **Professional certificates.** A professional certificate may be renewed if it has not been expired for more than five (5) years and renewal requirements are met.

(1) To renew a professional certificate the applicant must submit the appropriate application and pay the appropriate processing fee. See 210:20-9-9 (d).

(2) The applicant must have completed a minimum of five (5) years of school experience in an accredited school during the seven (7) year validity period of the certificate. Applicants who have fewer than five (5) years of school experience during the validity period of their professional certificate may substitute coursework in professional education or specialization from an accredited college or university for each year of school experience they are lacking at the following rate:

(A) with four (4) years of experience, complete three (3) semester hours;

(B) with three (3) years of experience, complete four (4) semester hours;

(C) with two (2) years of experience, complete five (5) semester hours;

(D) with one (1) year of experience, complete six (6) semester hours; or

(E) with zero (0) years of experience, complete seven (7) semester hours.

(3) Teachers who teach one-half day in an accredited school each school year for the seven (7) year validity period of their certificate may renew a professional certificate.

(4) The issuance of new professional certificates will be discontinued after December 31, 1988.

(5) Individuals holding a valid professional certificate on December 31, 1988, will be allowed to retain that certificate by meeting renewal requirements.

(6) School experience, for purposes of renewing a standard certificate, is experience as a teacher, supervisor, or administrator in a school, college, or university accredited by either a state board of education or state board of regents.

(7) If a professional certificate has been expired for one (1) year or more, the applicant must undergo a new criminal history record check, as provided for at 70 O.S. § 5-142. Applicant is responsible for any fees associated with the criminal history record check.

(c) **Licenses, provisional certificates.**

(1) **Licenses.**

(A) A license will be in renewable status until conclusion of the Residency Program, at which time a recommendation regarding certification will be made. A license cannot be reissued to an individual who has served two (2) years in the residency program without receiving the residency committee's recommendation for a certificate.

(B) Application for reissuance of a license shall be submitted directly to the State Department of Education along with the appropriate processing fee. See 210:20-9-9 (d).

(2) **Nonvocational provisional certificates.** Nonvocational provisional certificates may be renewed if requirements outlined by the State Department of Education toward meeting requirements for a standard certificate are met during the term of validity of the provisional certificate.

(3) **Vocational provisional certificates.** Vocational provisional certificates may be renewed if requirements outlined by the State Department of Education and/or the Oklahoma Department of Vocational and Technical Education toward meeting requirements for a standard certificate are met during the term of validity of the provisional certificate.

(d) **Supplemental renewal regulations.**

(1) Experience as a professional employee of a state education agency or professional educational organization is considered valid experience for the renewal of a standard or professional certificate.

(2) Teachers who teach one-half day in an accredited school (nursery--higher education) each year for the validity period of their certificate may renew a standard or professional certificate.

(3) Teaching experience with the Oklahoma Department of Corrections Educational System, the Oklahoma

Department of Human Services as a vocational rehabilitation counselor, with optional/special function schools in Oklahoma accredited by the North Central Association of Colleges and Schools, experience in the Head Start Program, full-time active military service, or experience as a member of the Oklahoma Legislature may be accepted in meeting requirements for renewal of a standard or professional certificate.

(4) The State Board of Education shall recognize full-time service as a member of the staff of the house of representatives, the senate or the legislative service bureau in an area related to education as valid experience for renewal of the standard certificate. This experience is calculated at the same rate as it is for other teachers.

(5) Any person who is receiving retirement compensation from the Teacher Retirement System may renew the last standard or professional certificate for the purpose of substitute teaching.

(6) A minimum of two-thirds of a school year (120 days) acquired in not more than two (2) contractual school years during the validity of the certificate in accredited schools may be considered as one (1) year of school experience.

(7) A teacher who has taught more than one-half of a day for 120 days or more will be considered as having had one year of experience.

(8) Substitute teachers, unless under contract, may count experience acquired in not more than two (2) consecutive years during the validity of the certificate.

(9) Student teaching, experience in nonaccredited schools, experience while not holding a valid certificate, and experience while providing contracted services will not be accepted as school experience for purposes of renewal.

(10) Applications for renewal of standard or professional certificates or reissuance of licenses will not be accepted prior to January 1 of the year in which the certificate or license expires.

[OAR Docket #15-476; filed 6-12-15]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 20. STAFF

[OAR Docket #15-477]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 9. Professional Standards: Teacher Education and Certification
Part 9. Teacher Certification
210:20-9-99. National Board certification [REVOKED]
AUTHORITY:
70 O.S. § 3-104; 70 O.S. § 6-204.2; State Board of Education
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INCORPORATIONS BY REFERENCE:
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ANALYSIS:
Revocation of the rule was necessary due to statutory changes. House Bill 1660 (2013) amended 70 O.S. § 6-204.2 to provide that teachers who attain National Board certification after June 30, 2013, will be compensated with a designated salary increment in the minimum teacher salary schedule, so the administrative rule no longer applies.
CONTACT PERSON:
Lori Murphy, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Telephone number: (405) 522-5260

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 9. PROFESSIONAL STANDARDS: TEACHER EDUCATION AND CERTIFICATION

PART 9. TEACHER CERTIFICATION

210:20-9-99. National Board certification [REVOKED]

~~(a) Subject to availability of funds, a bonus in the amount prescribed in 70 O.S. § 6-204.2, shall be provided to Oklahoma teachers holding National Board certification.~~

~~(b) If adequate funding is not available for a full bonus to be provided, the bonus amount may be prorated.~~

~~(c) To document having a current National Board certificate and being employed full time as a classroom teacher in the public schools of Oklahoma, as of January 1 of the year the bonus is to be awarded, a verification form will be sent to each National Board certified teacher identified by the Oklahoma Commission for Teacher Preparation to be signed by the teacher and the superintendent of the local school district and returned to the State Department of Education before the bonus is awarded.~~

~~(d) Other National Board certified teachers, submitting, as of January 1 of the year the bonus is to be awarded, a verification form documenting having a National Board certificate and being employed as a full-time teacher in Oklahoma,~~

~~shall receive a bonus. The verification form, signed by the National Board certified teacher and the superintendent of the local school district shall be submitted to the State Department of Education before the bonus is awarded. Full-time equates to a minimum of 175 contracted days and a minimum of 6 hours per day, Monday through Friday, and must be correctly reported to the State Department of Education through school personnel records as a full-time equivalency of 1.0, and the individual must be coded as a full-time instructional position.~~

[OAR Docket #15-477; filed 6-12-15]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 20. STAFF

[OAR Docket #15-478]

RULEMAKING ACTION:
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RULES:
Subchapter 9. Professional Standards: Teacher Education and Certification
Part 9. Teacher Certification
210:20-9-105. Non-traditional certification in special education [NEW]
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SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
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Part 9. Teacher Certification
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Register publication:
32 Ok Reg 22
Docket number:
14-853
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The rule implements the provisions of House Bill 2683 (2014) pertaining to non-traditional certification of special education teachers. The rule implements statutory requirements that applicants for provisional or standard certificates in special education have obtained at least a bachelor's level college degree from an accredited institution of higher education, and permit individuals certified through the non-traditional process-but who do not hold a certification in early childhood or elementary certification-to obtain Highly Qualified status necessary to teach special education students at the early childhood or elementary levels by successful completion of the corresponding subject area exam (OSAT).
CONTACT PERSON:
Lori Murphy, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Telephone number: (405) 522-5260

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 9. PROFESSIONAL STANDARDS: TEACHER EDUCATION AND CERTIFICATION

PART 9. TEACHER CERTIFICATION

210:20-9-105. Non-traditional certification in special education

(a) **Provisional certificates in special education for qualified applicants.** Notwithstanding any other rule in this Part, upon payment of the required processing fee for a provisional certificate set forth in 210:20-9-9, the Oklahoma State Department of Education shall issue a one year provisional special education certificate in the area of mild-moderate or severe-profound disabilities to any qualified applicant. An applicant will be considered "qualified" if the applicant has met the following criteria:

(1) Applicant has earned a bachelor's level college degree from an accredited institution of higher education;

(2) Applicant provides a written recommendation for a certificate by a school district board of education or an accredited institution of higher education;

(3) Applicant has satisfactorily completed a one-hundred fifty (150) clock hour special education program which has been approved annually by the State Department of Education Office of Special Education in accordance with the criteria approved by the State Board of Education; and

(4) A national criminal history record check of the applicant has been conducted in accordance with the requirements of 70 O.S. § 5-142, the cost of which shall be paid by the Applicant.

(b) **Renewal of a provisional certificate in special education.** The one year provisional special education certificate issued in accordance with the provisions of (a) of this Section may be renewed for up to two (2) additional periods of one year each upon submission of proof from an accredited institution of higher education that the individual has successfully completed at least six (6) credit hours of prescribed coursework during the previous year in either:

(1) A nontraditional route to certification program in mild-moderate or severe-profound disabilities or:

(2) A master's degree program in special education.

(c) **Standard certificates in special education for provisional certificate holders.** Notwithstanding any other rule in

this Part, upon payment of the required processing fee for a standard certificate set forth in 210:20-9-9, the Oklahoma State Department of Education shall issue a standard special education certificate in the area of mild-moderate or severe-profound disabilities to any individual who has met all of the following requirements:

(1) The applicant has been issued one or more provisional special education certificates in accordance with (a) and (b) of this Section;

(2) Within three (3) years of the date of issuance of the applicant's initial provisional special education certificate, the applicant has successfully completed the prescribed coursework of a nontraditional route to certification program in either mild-moderate or severe-profound disabilities from an accredited institution of higher education;

(3) The applicant has successfully completed the general education examination (OGET) and the professional teaching examination (OPTE); and

(4) The applicant has successfully completed the subject area competency examination (OSAT) in special education for mild-moderate or severe-profound disabilities as required by 70 O.S. § 6-187.

(d) **Standard certificates in special education for individuals with a master's degree in special education.** Notwithstanding any other Section in this Part and without requiring applicant to first obtain a provisional special education certificate, upon payment of the required processing fee for a standard certificate set forth in 210:20-9-9, the Oklahoma State Department of Education shall issue a standard special education certificate in the area of mild-moderate or severe-profound disabilities to any individual who has met all of the following requirements:

(1) Applicant has earned a bachelor's level college degree from an accredited institution of higher education;

(2) Applicant has successfully completed the prescribed coursework of a master's degree program in special education from an accredited institution of higher education;

(3) Applicant has successfully completed the general education examination (OGET) and the professional teaching examination (OPTE);

(4) Applicant has successfully completed the subject area competency area examination (OSAT) in special education for mild-moderate or severe-profound disabilities as required by 70 O.S. § 6-187; and

(5) A national criminal history record check of the applicant has been conducted in accordance with the requirements of 70 O.S. § 5-142, the cost of which shall be paid by the Applicant.

(e) **Certification in special education for individuals certified via an alternative placement certification route.** Notwithstanding any other provision in this Section, upon payment the required processing fee for a provisional and/or standard certificate set forth in 210:20-9-9, the Oklahoma State Department of Education shall issue a special education certificate in the area of mild-moderate or severe-profound disabilities to any individual who meets all of the following requirements:

(1) Applicant has earned a bachelor's level college degree from an accredited institution of higher education;

(2) Applicant holds an alternative placement teaching certificate issued in accordance with the provisions of 70 O.S. § 6-122.3 and accompanying regulations at 210:20-9-110 in one or more of the following areas:

(A) Early childhood education;

(B) Elementary education; or

(C) A "core academic subject" as defined by 20 U.S.C. § 7801(11) and the accompanying regulation at 34 C.F.R. § 200.55(c); and

(3) Applicant has successfully completed the subject area competency examination (OSAT) in Special Education for mild-moderate or severe-profound disabilities as required by 70 O.S. § 6-187.

(4) The provisional or standard alternative placement teaching certificate cannot have been obtained through the career development for paraprofessionals program set forth by 70 O.S. § 6-127A and accompanying regulation at 210:20-9-102.

(5) In the event the applicant has obtained a provisional alternative placement teaching certificate, the special education certificate obtained pursuant to this subsection shall remain provisional until applicant obtains a standard alternative placement teaching certificate, at which point applicant may be eligible to obtain a standard special education certificate upon payment of the required processing fee for issuance of a standard certificate as set forth in 210:20-9-9.

(f) **Highly qualified status.** A teacher who holds a provisional special education certificate issued or renewed in accordance with (a) or (b) of this Section or a standard special education certificate issued in accordance with (c), (d), or (e) of this Section, must meet the requirements for "highly qualified" special education teachers set forth at 34 C.F.R. § 300.18 if the teacher provides direct special education instruction in a "core academic subject" as defined by 20 U.S.C. § 7801(11) and accompanying regulation at 34 C.F.R. § 200.55(c). A teacher certified to teach special education in accordance with the provisions of this Section may be considered a "highly qualified" special education teacher in the State in accordance with the following provisions:

(1) **Core academic areas - middle and secondary education.** A teacher who holds a provisional special education certificate that is issued or renewed in accordance with (a), (b) or (e) of this Section, or a standard special education certificate issued in accordance with (c), (d), or (e) of this Section and who provides direct instruction in a "core academic subject" as defined by 20 U.S.C. § 7801(11), may be considered a special education teacher who is "highly qualified" to teach a core academic subject at a secondary level if the teacher has met all of the following requirements:

(A) The teacher has successfully completed the subject area competency examination (OSAT) in special education for mild-moderate or severe-profound disabilities; and

(B) The teacher has successfully completed the appropriate competency examination (OSAT) in each

core academic subject taught, or, if the teacher is not new to the profession (i.e., was a certified teacher prior to December 3, 2004), demonstrated competency in each core academic subject taught through a High, Objective, Uniform State Standard of Evaluation (HOUSSE).

(2) **Core academic areas - early childhood and elementary education.** A teacher who holds a provisional certificate issued or renewed in accordance with (a), (b) or (e) of this Section, or a standard certificate issued in accordance with (c), (d) or (e) of this Section, who provides direct instruction in a "core academic subject" as defined by 20 U.S.C. § 7801(11), cannot be considered a special education teacher who is "highly qualified" to teach special education courses at an early childhood or elementary education level unless they have met all of the following requirements:

(A) The teacher has successfully completed the subject area competency examination (OSAT) in Special Education for mild-moderate or severe-profound disabilities;

(B) The teacher has successfully completed the appropriate subject area competency examination (OSAT) in early childhood or elementary education in accordance with the requirements set forth in 70 O.S. § 6-187, or, if the teacher is not new to the profession (i.e., was a certified teacher prior to December 3, 2004), demonstrated competency in early childhood or elementary education through a High, Objective, Uniform State Standard of Evaluation (HOUSSE).

(3) **Core academic areas - alternate achievement standards.** Notwithstanding (1) and (2) of this subsection, a teacher who holds a provisional or standard certificate issued or renewed in accordance with (a) or (b) of this Section and who provides direct instruction in a "core academic subject" as defined by 20 U.S.C. § 7801(11) cannot be considered a special education teacher who is "highly qualified" to teach alternate achievement standards as a special education teacher unless the teacher has met the following requirements:

(A) If teaching middle or secondary level core academic subjects exclusively to students assessed against alternative academic achievement standards, the teacher has successfully completed the appropriate competency examination (OSAT) in each core academic subject taught, or, if the teacher is not new to the profession (i.e., was a certified teacher prior to December 3, 2004), demonstrated competency in each core academic subject taught through a High, Objective, Uniform State Standard of Evaluation (HOUSSE).

(B) If teaching early childhood level or elementary level core academic subjects exclusively to students assessed against alternative standards, the teacher has successfully completed the appropriate competency examination (OSAT) in early childhood or elementary education in accordance with the requirements set forth in 70 O.S. § 6-187, or, if the teacher is not new to the profession (i.e., was a certified teacher prior to December 3, 2004), demonstrated competency in early childhood or elementary education through a High, Objective, Uniform State Standard of Evaluation (HOUSSE).

(g) **Additional certification in early childhood or elementary education.** A teacher who obtains a standard certificate under (c), (d) or (e) of this Section may add a standard certificate in early childhood or elementary education upon successful completion of all of the following requirements:

(1) An appropriate teacher preparation program approved by the Oklahoma Commission for Teacher Preparation in accordance with the provisions of OAC 712:10-5; and

(2) The appropriate subject area competency examinations (OSAT) in early childhood or elementary education in accordance with the requirements set forth in 70 O.S. § 6-187.

[OAR Docket #15-478; filed 6-12-15]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 20. STAFF

[OAR Docket #15-479]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 41. Teacher and Leader Effectiveness [NEW]
210:20-41-1. Teacher and Leader Effectiveness Evaluation System overview [NEW]
210:20-41-2. Quantitative components of the Teacher and Leader Effectiveness Evaluation System [RESERVED]
210:20-41-3. Qualitative components of the Teacher and Leader Effectiveness Evaluation System [NEW]
AUTHORITY:
70 O.S. § 3-104; 70 O.S. § 6-101.10 et seq.; State Board of Education
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ANALYSIS:
The new subchapter outlines the Teacher and Leader Effectiveness Evaluation System (TLE), pursuant to 70 O.S. § 6-101.16. 210:20-41-1 sets out the general structure of the system. A section is reserved for future

codification of quantitative components, and 210:20-41-3 addresses the qualitative components of TLE.

CONTACT PERSON:

Lori Murphy, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Telephone number: (405) 522-5260

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 41. TEACHER AND LEADER EFFECTIVENESS

210:20-41-1. Teacher and Leader Effectiveness Evaluation System overview

(a) **Purpose and application.** To ensure that each Oklahoma student is provided with effective instruction that contributes to student success, each school district board of education shall maintain and annually review a written policy of evaluation for all teachers and leaders, to be based upon the minimum criteria for the Teacher and Leader Effectiveness Evaluation System (TLE) outlined at 70 O.S. § 6-101.16. For purposes of the TLE, "leader" means a principal, assistant principal, or any other school administrator who is responsible for supervising classroom teachers. "Teacher" means a duly certified person who is employed to serve as a counselor, librarian, or school nurse, or in any instructional capacity.

(b) **Five-tier rating system.** Each teacher and leader evaluated under the TLE shall be rated on a five-tier scale, and assigned one of the following ratings:

(1) Superior;

(2) Highly effective;

(3) Effective;

(4) Needs improvement; or

(5) Ineffective.

(c) **Annual evaluations.** Every teacher and leader shall be evaluated annually, and provided with feedback for the purpose of improving student learning outcomes. Both the quantitative and qualitative components of the TLE shall be calculated each year for every teacher and leader, with the following limited exceptions:

(1) A first year teacher's TLE evaluation shall be based solely on qualitative components, as set forth at 210:20-41-3(b). During the first year of teaching, no Student Academic Growth (SAG) data will be collected. During the second year of teaching, the TLE evaluation score will still be derived entirely from qualitative components, but SAG data will be collected to be applied to the following year's evaluation.

(2) A career teacher who has received a "Superior" or "Highly effective" rating under theTLE may be evaluated once every two years. SAG quantitative data for these teachers shall continue to be collected and reported annually, as this data will be a necessary component of the teacher's next scheduled evaluation.

(3) A teacher or leader who moves to an Oklahoma school district from out of state shall be evaluated during their first school year in Oklahoma based solely on qualitative components, as set forth at 210:20-41-3(b). During the first year of teaching in Oklahoma,SAG data will be collected to be applied to the following year's evaluation.

(4) A teacher or leader who retires or leaves teaching or administrative employment, but returns to a teaching or administrative position, shall be evaluated solely on qualitativecomponents during the year they return to service. SAG data will be collected during the year they return to service, to be applied to the following year'sevaluation.

(d) **Remediation plans and instructional coaching.** For all teachers rated as "Needs improvement" or "Ineffective", comprehensive remediation plans and instructional coaching shall be provided. Each school district's written policy for evaluation shall include guidelines for comprehensive remediation plans and an instructional coaching program.

(e) **Teachers and leaders who change positions.** For an educator who serves as a teacher one year and an administrator the following year, the SAG data acquired during the year of employment as a teacher shall carry over as the SAG data applied to TLE evaluation during the educator's first subsequent year of employment as an administrator. For an educator who serves as an administrator one year and a teacher the following year, the SAG data acquired during the year of employment as an administrator shall carry over as the SAG data applied to TLE evaluation during the educator's first subsequent year of employment as a teacher.

(f) **Reporting.** Every school district must transmit data collected for TLE purposes to the State Department of Education through the current information upload system designated by the agency.

(g) **Confidentiality of records.** The State Department of Education shall keep records of annual evaluations received pursuant to TLE confidential. TLE records which in any way identify a current or former public employee shall not be subject to disclosure under the Oklahoma Open Records Act.

210:20-41-2. Quantitative components of the Teacher and Leader Effectiveness Evaluation System [RESERVED]

210:20-41-3. Qualitative components of the Teacher and Leader Effectiveness Evaluation System

(a) **Proportion of overall rating.** Fifty percent (50%) of the ratings of teachers and leaders shall be based on qualitative assessment components which are rigorous and fair.

(b) **Qualitative assessment of teachers.** An evidence-based qualitative assessment tool for the assessment of teachers must include observable and measurable characteristics of personnel and classroom practices that are correlated

to student performance success. These characteristics shall include, but not be limited to:

(1) Organizational and classroom management skills;
(2) Ability to provide effective instruction;
(3) Focus on continuous improvement and professional growth;
(4) Interpersonal skills; and
(5) Leadership skills.

(c) **Qualitative assessment of leaders.** An evidence-based qualitative assessment tool for the assessment of administrators must include observable and measurable characteristics of personnel and site management practices that are correlated to student success. These characteristics shall include, but not be limited to:

(1) Organizational and school management, including retention and development ofeffective teachers and dismissal of ineffective teachers;
(2) Instructional leadership;
(3) Professional growth and responsibility;
(4) Interpersonal skills;
(5) Leadership skills; and
(6) Stakeholder perceptions.

[OAR Docket #15-479; filed 6-12-15]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 25. FINANCE

[OAR Docket #15-480]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Funding Criteria
210:25-3-2. Average daily attendance/membership [AMENDED]
AUTHORITY:
70 O.S. § 3-104; 20 U.S.C. § 1412(a)(1)(A); State Board of Education
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ANALYSIS:
The amendments to the rule clarify that a three (3) year old child with a disability whose Individual Education Program (IEP) specifies that they should receive educational services from the school district may be included in the district and school site's average daily attendance and average daily membership counts.
CONTACT PERSON:
Lori Murphy, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Telephone number: (405) 522-5260

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 3. FUNDING CRITERIA

210:25-3-2. Average daily attendance/membership

(a) The legal average daily attendance/membership for the purpose of calculating state aid to any district will be based upon the attendance/membership in that district of residence and legally transferred pupils (except Special Education pupils transferred), five (5) years of age, September 1 of that school year or not over twenty-one (21) years of age as of September 1 of that school year. Average daily attendance/membership also includes students age three (3) and older who have an Individualized Education Program (IEP).

(1) Provided, beginning with the 1990-91 school year, all children who are at least four (4) years of age on or before September 1 and who have not attended a public school kindergarten shall be entitled to attend early childhood programs at any public school in the state where such programs are offered. These students shall be included in the average daily attendance/membership. Children age three (3) who have an Individualized Education Program (IEP) which indicates that they need to attend an early childhood program in order to obtain a free appropriate public education in the least restrictive environment shall also be entitled to attend such programs, and shall also be included in the average daily attendance/membership.

(2) Provided, those persons over the age of 21 and under the age of 26 unable to complete high school prior to age twenty-one (21) due to physical disabilities or service in the United States Armed Forces or Auxiliary Organizations may be allowed to attend as a legal student for the period of time missed due to the disability or service in the Armed Forces.

(3) Provided further, any child who has been in legal attendance/membership in a public or private school in another state or in a Department of Defense School for military dependents may be legally enrolled and counted as a legal ADA/ADM, even though the child is underage in Oklahoma.

(b) When pupils are promoted at mid-term from the eighth grade in school districts not maintaining an accredited junior high school to high school, the average daily attendance/membership of such pupils for the entire school year shall be credited to the elementary grades. Pupils promoted from the seventh grade directly to the ninth grade will also be counted as

elementary attendance/membership except with the approval of the Division of Instruction.

(c) Elementary ADA/ADM is defined as early childhood, if applicable, or kindergarten through the eighth grade for dependent districts and independent districts that do not have an approved junior high school or middle school.

(d) All other districts shall calculate elementary ADA/ADM on early childhood, if applicable, or kindergarten through sixth grade.

[OAR Docket #15-480; filed 6-12-15]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 25. FINANCE

[OAR Docket #15-481]

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RULES:
Subchapter 3. Funding Criteria
210:25-3-4. Personnel [AMENDED]
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70 O.S. § 3-104; State Board of Education
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ANALYSIS:
The amendments to the rule establish specific timeframes during which school districts may submit each of the three personnel reports required throughout the year to the State Department of Education. The amendments expand school district access to the personnel report submission system, via district superintendents, during certain periods when the reporting windows have been closed. The names of some personnel reports are also updated for greater clarity.
CONTACT PERSON:
Lori Murphy, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Telephone number: (405) 522-5260

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 3. FUNDING CRITERIA

210:25-3-4. Personnel

(a) Teachers who have not yet received their degrees shall be considered as having a degree if all requirements have been completed except participation in graduation exercises.

(b) A teacher who has taught more than one-half of a day for 120 days or more shall be considered as having had one year of experience. A teacher who has taught the equivalent of 120 days within not more than two contractual years shall be considered as having had one year of experience. Experience shall be counted if the individual was legally employed and paid from funds under the supervision of a school board of education or any school accredited by the State Board of Education. Practice teaching or a practicum in a teacher-training institution shall not be considered as experience. Veterans Agricultural training instructors or any teacher employed full-time by an accredited college or university shall be considered as having one (1) year of teaching experience for each year of service after July 1, 1945, if such teaching experience is approved by the State Board of Education, provided such teacher held a bachelor's degree at the time these services were performed and was eligible to have been issued a teaching certificate.

(c) Any district identified as contracting with a teacher, or administrator without a valid certificate shall be penalized in state aid. The state aid penalty amount shall be the salary amount paid by the district for the number of days the teacher or administrator taught without a valid certificate in excess of allowable substitute days.

(d) All teachers must have an official transcript on file with the Professional Standards Section showing the degree completed.

(e) ~~No later than~~The timeframe for submitting Initial Personnel Reports shall be open from September 1 through October 1 of each year~~,~~. No later than October 1, all public school districts must file an accurate Initial ~~Certified~~ Personnel Report with the State Department of Education. The report shall list all ~~certified~~ personnel in the district and shall list for each person the position code, compensation, degree, certification information, years of qualified experience, number of days employed and other information as deemed necessary. Beginning with the 2004-2005 school year the school district will report to the State Department of Education the salary and benefit information disaggregated as required by law. For each employee not returning from the previous year, a reason for no return code shall be recorded. The Initial Personnel Report must be certified no later than October 15.

(f) From November 1 through December 15 of each year, a school district superintendent shall have access to the district's Initial Personnel Report. During this period, the superintendent will be permitted to make necessary corrections and updates to the report. Any changes made by a superintendent to the school district's Initial Personnel Report must be submitted no later than December 15. Reports are to be recertified after updates are complete.

(~~f~~g) ~~No later than~~The timeframe for submitting Mid-Year Personnel Reports shall be open from January 1 through

February 1 of each year~~,~~. No later than February 1, all public school districts must file an accurate revised ~~Final Certified~~Mid-Year Personnel Report with the State Department of Education. The report shall contain any corrections, departures, and additions that have occurred since the October 1 Initial Personnel ~~report~~Report was filed so that more accurate information is available for state aid calculations, legislative projections and other statistical requirements. State Aid funds shall be withheld from any school district that does not submit the ~~Final Certified~~Mid-Year Personnel Report by February 1. Only after the accurate report has been received by the State Department of Education shall the withheld State Aid funds be released to the school district.

(h) From February 15 through May 15 of each year, a school district superintendent shall have access to the district's Mid-Year Personnel Report. During this period, the superintendent will be permitted to make necessary corrections and updates to the report. Any changes made by a superintendent to the school district's Mid-Year Personnel Report must be submitted no later than May 15. Reports are to be recertified after updates are complete.

(~~g~~i) All public school districts must file an accurate End-of-Year Supplemental ~~Certified~~ Personnel Report showing the changes for ~~certified~~ personnel previously listed as well as all information required on any new ~~certified~~ employees not previously listed. This report shall contain any corrections or changes to be made to the February 1 Mid-Year Personnel Report. All employees that departed the school district prior to completion of the school year shall be given a "Reason-For-Leaving" code and have salary and days employed adjusted. School districts shall also file the Certified Substitute Teachers Report listing the number of days taught in the school year by all certified substitute teachers. The timeframe for submitting End-of-Year Supplemental Personnel Reports and Certified Substitute Teachers Reports shall be open from June 1 to July 15 of each year. These two reports shall be filed with the State Department of Education no~~t~~ later than ~~June 15~~July 15.

(~~h~~j) If the district pays a teacher less than the minimum salary required by law, the difference shall be deducted from the next payment of state aid, or a claim shall be filed by the Director of Finance to recover any such overpayment to the school district.

(1) The School Personnel Records Section will notify the school superintendent of all potentially underpaid teachers after the ~~Final Certified~~Mid-Year Personnel Reports are filed with the State Department of Education in February. The school superintendent shall notify the School Personnel Records Section of the district's intent to pay the teacher the underpaid amount or to dispute the amount. If disputed, the school superintendent is responsible for providing documentation to the School Personnel Records Section to show the teacher was not underpaid based on the state minimum salary schedule. The State Aid Section shall withhold from state aid the amount underpaid by October 1 in the school year following the year in which the underpayment occurred.

(2) The method for calculating teacher salaries to ensure state minimums are met shall be determined by the School Personnel Records Section.

(~~i~~k) If a teacher asserts that the school district he or she is employed by and was employed by the previous year, (or if underpayment occurred prior to July 1, 2002, and the teacher filed an action to recover an underpayment in a court of competent jurisdiction before July 1, 2002), has reduced the salary and/or fringe benefit level without a proportionate reduction in hours or duties, the teacher may file a complaint with the State Department of Education's School Personnel Records Section. The complaint must be accompanied by documentation sufficient to justify the allegations in the complaint. The teacher shall also send a copy of the complaint and supporting documentation to the superintendent of the school district. The documentation shall include, but not be limited to, the teacher's salary and benefit amount for each year in question. The superintendent shall be given an opportunity to submit documentation to refute the teacher's claim within 20 calendar days of receipt of the complaint. The School Personnel Records Section shall review all the documentation presented and present the complaint to the State Board of Education for determination of whether the school district willfully reduced the teacher's salary and benefits in violation of the law. If the school district does not provide a response and supporting documentation to the complaint, the complaint shall be upheld. In the event the review of the documents reveals that the complaint is valid, the State Board of Education shall withhold the amount underpaid from the district's state aid as a penalty. Additionally, the same amount shall be withheld and that amount shall be sent to the teacher.

(~~j~~l) Any superintendent, principal, or teacher shall not be considered as having received their minimum salary unless such salary is paid by school district warrants issued by the board of education or the school district.

(~~k~~m) Personnel on the staff of the Oklahoma Department of Career and Technology Education shall be approved by the State Board of Education for increment purposes.

(~~l~~n) Certified personnel teaching in Manpower Skill Centers and other Manpower Development Training Programs approved by the Oklahoma Department of Career and Technology Education shall be considered as teaching in a school approved by the State Board of Education for increment purposes as provided by Oklahoma School Law.

(o) Certified personnel teaching in virtual charter schools shall be considered as teaching in a school approved by the State Board of Education for increment purposes as provided for by Oklahoma School Law.

[OAR Docket #15-481; filed 6-12-15]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 25. FINANCE

[OAR Docket #15-482]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Funding Criteria
210:25-3-8. "Economically disadvantaged" status [NEW]
AUTHORITY:
70 O.S. § 3-104; State Board of Education
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
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SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The rule establishes a definition of the term "economically disadvantaged" that does not require a student to actually receive free or reduced price school lunches in order to qualify as "economically disadvantaged". Under the rule, a student would be considered "economically disadvantaged" if they meet any of the USDA criteria, including but not limited to income eligibility guidelines. This definition will allow eligible students to be designated as economically disadvantaged for federal funding purposes regardless of their actual participation in the National School Lunch Program. 70 O.S. § 18-109.5 authorizes the State Board of Education to modify the definition of the term.
CONTACT PERSON:
Lori Murphy, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Telephone number: (405) 522-5260

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 3. FUNDING CRITERIA

210:25-3-8. "Economically disadvantaged" status

The term "economically disadvantaged" applies to any student whose household falls within the United States Department of Agriculture (USDA) Eligibility Guidelines in the school year for which the determination is being made, regardless of whether the student actually receives benefits under the National School Lunch Program or any other child nutrition program.

[OAR Docket #15-482; filed 6-12-15]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 25. FINANCE

[OAR Docket #15-483]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Budgeting and Business Management
Part 1. Implementation
210:25-5-4. Accounting [AMENDED]
AUTHORITY:
70 O.S. § 3-104; State Board of Education
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ANALYSIS:
The amendments to the rule strike a reference to an administrative rule that has been revoked, and change the final date that school boards or the State Department of Education are permitted to make alterations to submitted financial data from November 15 to December 15 of each year. This will allow local educational agencies and the State Department of Education Financial Accounting Section additional time to verify financial data submitted by school districts.
CONTACT PERSON:
Lori Murphy, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Telephone number: (405) 522-5260

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 5. BUDGETING AND BUSINESS MANAGEMENT

PART 1. IMPLEMENTATION

210:25-5-4. Accounting

(a) The financial structure of an Oklahoma public school district consists of various classifications as referenced in Oklahoma Administrative Code (OAC) 210:25-7-1, (Oklahoma Cost Accounting System [OCAS]). School District accounting systems shall be organized and operated on a basis that assures legal compliance by the recording and summarizing of financial transactions within funds, each of which is completely independent of any other. Each fund shall account for and continually maintain the identity of its revenues and expenditures. Financial transactions for purposes of this regulation and as referenced in 70 O.S. 2001, § 5-135.2 shall be defined as a detailed reporting of revenue within the Source of Revenue dimension. Revenue shall be reported to the bold codes within each of the following broad categories: District Source of Revenue, Intermediate Source of Revenue, State Source of Revenue, and Federal Source of Revenue. Expenditures shall be reported by the bold codes within the Function dimension as follows: Instruction, Support Services-Students, Support Services-Instructional Staff, Support Services-General Administration, Support Services-School Administration, Support Services-Central, Operation and Maintenance of Plant Services, Student Transportation Services, Child Nutrition Programs Operations, Community Services Operations and Facilities Acquisition and Construction Services. Additional dimensions for Revenue and Expenditures are coded to provide classification by Fiscal Year, Fund, Project Reporting, Object, Program, Subject, Job Classification, and Operational Unit, where applicable.

(b) The year-end financial report recording and summarizing all revenue and expenditure financial transactions will be completed and certified on the due date.

(c) The school district must inform the Financial Accounting Section of the State Department of Education of any changes made at the district level to any of the financial transactions already submitted to the State Department of Education. Further, none of the data submitted by Law can be changed or altered by either the school district or the Financial Accounting Section after ~~November 15~~December 15 of each year.

(d) As referenced in 70 O.S. 2001, § 5-135.2 (B), the State Department of Education shall reduce the monthly payment of a district's State Aid funds if the district is not operating pursuant to said system. Not operating pursuant to said system shall be defined as a district not:

(1) accurately recording and reporting all revenue and expenditures by applicable OCAS bold code dimensions;

(2) submitting OCAS financial records via the Web-based system of all recorded and reported revenue and expenditures by applicable OCAS bold code dimensions to the State Department of Education;

(3) ascertaining that current and accurate applicable OCAS codes are being utilized as updated and maintained by the State Department of Education;

(4) complying with regulations as outlined in OAC 210:25-3-7 (Financial information processing), OAC 210:25-5-10 (The encumbrance clerk), OAC 210:25-5-11 (The school district treasurer), ~~OAC 210:25-5-12 (Purchase order procedures for schools),~~ or OAC 210:25-5-13 (School activity fund);

(5) reconciling all recorded and reported revenue and expenditures by applicable OCAS bold code dimensions by balancing data with bank receipts and statements, purchase orders, warrant registers, investment ledgers, and all balance sheet accounts; and

(e) For appropriated funds, all indebtedness should be encumbered (have a purchase order issued and be recorded) on the day the obligation is incurred, rather than when it becomes due, and supporting documentation should be provided for all indebtedness.

(f) Upon the approval of the State Board of Education, school districts may make capital expenditures up to a maximum amount of $50,000 (fifty thousand dollars) during the current fiscal year within the General Fund pursuant to 70 O.S. 2001, § 1-117, if the school district meets the established criteria as outlined in the Statutes. School districts shall be voting the maximum five (5) building fund mills. General Fund monies authorized by the State Board of Education for expenditures must be expended within the current fiscal year. Any such funds encumbered as of June 30th of the current fiscal year, but not expended by November 15th of the subsequent fiscal year, shall lapse and return to the original purpose of such funds.

(g) A school district shall be authorized to utilize general fund monies for capital expenditures, in addition to the amount specified in subsection (c), pursuant to the provisions of 70 O.S. 2001, § 1-117.

(h) Inventory cards or data processing records shall be kept on all equipment and removable fixtures, showing purchase order number when known, date of purchase (when known, if not known an estimated date shall be used), amount of purchase (if known, if not known present value must be estimated) a description of the item, the serial number (when applicable) and the location of the item. New purchases shall be included in the records on the same day in which they are physically received by the district. Disposed equipment must be removed from the records on the disposal date and a detailed description of the circumstances which results in the disposal recorded. Disposed equipment should not be included in the records of future years.

[OAR Docket #15-483; filed 6-12-15]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 25. FINANCE

[OAR Docket #15-484]

RULEMAKING ACTION:
PERMANENT final adoption

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

AUTHORITY:
70 O.S. § 3-104; 70 O.S. § 22-101 et seq.; State Board of Education
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n/a
ANALYSIS:
The amendment removes a reference to the Oklahoma State Board of Education as the authority which must approve independent auditors qualified to examine the finances of local school districts, and states that such auditors must be approved by the Oklahoma State Auditor and Inspector, the appropriate state agency authorized to approve independent auditors.
CONTACT PERSON:
Lori Murphy, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Telephone number: (405) 522-5260

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 5. BUDGETING AND BUSINESS MANAGEMENT

PART 1. IMPLEMENTATION

210:25-5-5. Auditing

(a) The statutes of the State of Oklahoma require the board of education of each school district to cause an annual audit of the district's financial activity. The audit must be made in accordance with State Statutes, State Board of Education Regulations and Federal Office of Management and Budget (OMB) Circular A-133. The State Board of Education shall examine each audit report and demand corrections of any existing deficiencies. It is mandatory that State Aid payments be withheld during noncompliance with the "School Audit Law~~.~~" at 70 O.S. § 22-101 et seq.

(b) Auditing is process of examining documents, reports, systems of internal control, accounting and financial procedures, and other evidence to ascertain:

(1) That the statements prepared from the accounts present fairly the financial position and results of financial operations of each of the school's funds;

(2) That the school administration has properly complied with statutory requirements and the rules and regulations of the State Board of Education in the conduct of its financial transactions;

(3) That the school's financial transactions have been conducted with mathematical accuracy and have been properly recorded;

(4) That the school has complied with the terms of grants and special agreements;

(5) That adequate stewardship has been exercised by the school board, its officers and employees in the conduct of their duties in the administration of school assets.

(c) The audit must encompass all of the school district's funds. The requirements in (b) of this Section form the basis for the reporting of the school's general, special revenue, capital projects and debt service funds. School activity funds, including school lunch funds, and other trust or fiduciary funds must also be included in the audit report.

(d) The accounting principles by which all audits will be performed are as follows:

(1) The school district's accounting system must conform with the laws of the State of Oklahoma and the rules and regulations of the State Board of Education.

(2) The school district's accounting system shall make it possible to demonstrate compliance with legal provisions.

(3) The school district's accounting system shall clearly reflect the financial operations of the school district.

(4) If accounting principles, procedures, or standards conflict with legal or regulatory provisions, the legal or regulatory provisions shall take precedence.

(5) The accounting system shall be kept in the manner prescribed by the State Board of Education or in the manner of an accounting system approved by the State Board of Education.

(6) The school district shall establish the funds prescribed or authorized by law and necessitated by sound financial judgment. The classification of funds shall be faithfully followed in the Estimate of Needs, Accounting System and Financial Reports.

(7) A complete self-balancing group of accounts shall be established for each fund. Each such group will include all the accounts necessary to set forth the financial operations of the fund and to reflect compliance with legal and regulatory provisions.

(8) If a fixed asset fund is maintained, the accounts shall be kept on the basis of original cost, or the estimated cost if the original cost is not available, or in the case of gifts, the appraised value at the time received.

(9) The accounting system shall provide for budgetary control for both revenues and expenditures, and the financial statements will reflect, among other things, budgetary information.

(10) The accounts, except activity funds, shall be maintained on a modified cash basis in accordance with the laws of the State of Oklahoma or a school district may elect to file an application with the State Board of Education to convert to Generally Accepted Accounting

Principles (GAAP) accounting. The State Board of Education will approve or reject the application based on the district's ability to implement the practice.

(11) Revenue and expenditures shall be classified in accordance with State Board of Education regulations in order to provide uniform accounting and consistent statistics.

(12) A cost accounting system is required. Cost accounting is in addition to a required financial accounting system, however, and must not be allowed to interfere with its uniform application. Although depreciation is not included in a required accounting system, it should be considered in determining unit cost when a cost accounting system is used.

(13) A common terminology and classification based upon that prescribed by State Board of Education rules and regulations, shall be used consistently throughout the estimate of needs, accounts, and financial reports.

(e) Primary audit procedures will consist of the following:

(1) Each Local Education Agency (LEA) will engage an independent auditor, approved by the ~~Oklahoma State Board of Education~~Oklahoma State Auditor and Inspector, to examine its financial statements. Each LEA superintendent shall notify the State Board of Education, prior to the end of the fiscal year to be audited, of the independent auditor who has been engaged to conduct the audit.

(2) Where there are differences in state and federal standards due to the statutory and regulatory requirements in both levels of government, the LEA and the auditor will examine and adhere to both in order to be in total compliance.

(3) The Oklahoma State Department of Education will establish and maintain a monitoring system to assure that federal and state audit requirements are met. The Oklahoma State Department of Education will review each audit report and notify the appropriate federal program administrator of any deficiencies reported by the independent auditor regarding federal programs. The administrator will implement the procedures deemed necessary to resolve the exceptions noted by the auditor. The final result of the action taken will be filed with the audit report no later than 90 days after the program administrator has been advised of the auditor's findings.

(4) The State Board of Education may make inquiries and request additional documentation and response related to exceptions, recommendations or comments noted by an auditor.

(f) Audit report requirements are as follows:

(1) Audit reports may be presented in the following formats:

(A) Schools which have obtained prior approval from the State Board of Education to use generally accepted accounting principles (GAAP), must use a straight GAAP Governmental Accounting Standards Board (GASB) No. 34 compliant presentation.

(B) Schools using the regulatory basis of accounting as defined by Oklahoma Statutes may use GASB 34 compliant audit report presentations.

(C) Schools using the regulatory basis of accounting as defined by Oklahoma Statutes may use another comprehensive basis of accounting as prescribed by the Oklahoma State Department of Education. An example of a school district single audit report presented in conformity with another comprehensive basis of accounting as prescribed by the Oklahoma State Department of Education is available in the Financial Accounting Section, State Department of Education. Schools need only present the funds and note disclosures that apply to the specific district. The example is not intended to take precedence over professional reporting standards and requirements.

(2) Informational statements will specify

(A) Board members and officers

(B) Statutory bonds

(C) Other fidelity or honesty bonds

(D) Insurance coverage

(E) Other desirable statements

(3) Size of audit report will conform to the specified dimensions:

(A) Length = Maximum, 11"

(B) Width = Maximum, 8 1/2"

(4) Each audit report shall be presented to and reviewed with the local board of education in a public meeting as required by law. Each audit report must contain a signed Acknowledgement Page on a form supplied by the State Department of Education. The Acknowledgement Page will verify the date the audit was reviewed with the local school board as well as the school board's acknowledgement that as the governing body of the district responsible for the district's financial and compliance operations the audit findings and exceptions have been presented to them.

(g) Requirements specific to Federal programs must be included in each audit.

(1) Federal regulations (OMB Circular A-133, and Compliance Supplement) require a financial and compliance audit of programs receiving federal funds. These regulations (in accordance with P.L. 98-502) ensure that audits be made on an organization-wide basis rather than a grant-by-grant basis and according to the standards and procedures expressed therein. The Oklahoma State Department of Education shall serve as the recipient agency for A-133 purposes for the local education agencies. Overclaim assessments may be levied where necessary when there has been a lack of compliance and treated as a current expenditure.

(2) This rule and the adoption of the standards and regulations for audits of local boards of education does not limit the authority of federal or state agencies to make audits of programs in the local education agencies, and is in keeping with OMB Circular A-133. Some state and local governmental units in Oklahoma prepare their financial statements in conformity with a comprehensive

basis of accounting other than generally accepted accounting principles. A-133 does not prohibit such practice; nonetheless, it requires, as do generally accepted auditing standards, that auditors state in their report the departures from generally accepted accounting principles. However, any additional audit work must build on the work already done.

(3) The auditor should clearly understand that A-133 audits require the expression of opinions and inclusion of comments in audit reports which go beyond the standard opinions and comments usually presented. Specifically, the audit report shall include:

(A) Financial statements, including footnotes, of the recipient organization.

(B) The auditors' comments on the financial statements which should:

(i) Identify the statements examined, and the period covered.

(ii) Identify the various programs under which the organization received Federal funds, and the amount of the awards received.

(iii) Identify by a schedule showing receipts and disbursements for each grant program.

(iv) State that the audit was done in accordance with the "General Accounting Office Standards for Audit of Governmental Organizations, Programs, Activities, and Functions," the "Guidelines for Financial and Compliance Audits of Federally Assisted Programs," any compliance supplements approved by OMB, and generally accepted auditing standards established by the American Institute of Certified Public Accountants.

(v) Express an opinion as to whether the financial statements are fairly presented in accordance with generally accepted accounting principles. If an unqualified opinion cannot be expressed, state the nature of the qualification.

(C) The auditors' comments on compliance and internal control should:

(i) Include comments on weaknesses in and noncompliance with the systems of internal control, separately identifying material weaknesses.

(ii) Identify the nature and impact of any noted instances of noncompliance with the terms of agreements and those provisions of Federal law or regulations that could have a material effect on the financial statements and reports.

(iii) Contain an expression of positive assurance with respect to compliance with requirements for tested items, and negative assurance for untested items.

(D) Comments on the accuracy and completeness of financial reports and claims submitted to state or federal agencies for federal fund advances or reimbursements.

(E) Comments on corrective action taken or planned by the recipient.

(F) Comments as to whether the indirect cost rates are appropriately calculated and applied.

(4) These requirements are common to nearly all state and local funds and federal programs:

(A) Funds disbursed by other governments were received and properly identified.

(B) Interest earned on idle funds was credited to the proper funds.

(C) Unexpended funds or unearned federal funds advanced or overpaid were correctly accounted for.

(D) A system of encumbrance accounting was maintained which reported the amount obligated, disbursed, remaining unobligated balance, and outstanding unliquidated obligations for each fund and program.

(E) Obligations reported were actually incurred during the fiscal year or approved program period, and, upon liquidation, were properly adjusted.

(F) Payments reported: Were actually made to the vendors, contractors and employees; were supported by adequate evidence of delivery of goods or performance of services; and conformed to applicable laws and regulations, including procurement requirements.

(G) Refunds, discount, etc., were properly applied as reductions of the gross expenditures of the specific funds or programs.

(H) Costs, direct and indirect, were correctly prorated to the proper funds or programs.

(I) The same expenditure was not claimed under more than one program or reported as an expenditure for two fiscal or program years.

(J) Inventory requirements for materials and equipment purchased with federal funds were maintained.

[OAR Docket #15-484; filed 6-12-15]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 30. SCHOOL FACILITIES AND TRANSPORTATION

[OAR Docket #15-485]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Transportation
210:30-5-5. Transportation routes and boundaries [AMENDED]
210:30-5-6. School buses [AMENDED]
210:30-5-8. School bus driver certification [AMENDED]
AUTHORITY:
70 O.S. § 3-104; 70 O.S. § 8-101; 70 O.S. § 9-104; 70 O.S. § 9-105; 47 O.S. § 15-109; State Board of Education
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n/a
ANALYSIS:
The amendments to 210:30-5-5 outline policies regarding the transportation of students who reside in an elementary school district and are enrolled at an independent school district in a grade they are entitled to pursue, under 70 O.S. § 8-101. These amendments clarify the procedures that apply when an independent district exercises its right to voluntarily provide transportation to its own students who reside in an elementary district. The amendments to 210:30-5-6 provide that transportation equipment used to transport 10 or more students to any curriculum based program or activity, including technology center attendance, must meet the minimum standards for Types A, B, C, and D school buses. This is necessary to ensure that vehicles used to transport students to and from technology centers meet the same standards as vehicles used to transport students to and from school. The amendments to 210:30-5-8 clarify that the valid Oklahoma State Department of Education School Bus Driving Certificate and supporting documentation required for school bus drivers is required for any school district employee or volunteer assigned any school bus driving duty involving the transportation of students.
CONTACT PERSON:
Lori Murphy, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Telephone number: (405) 522-5260

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 5. TRANSPORTATION

210:30-5-5. Transportation routes and boundaries

(a) **Evaluation.** All school bus routes shall be evaluated annually for safety and efficiency by the local school district supervisor of transportation or designee.

(b) **Transportation areas and boundaries.** A high school transportation area is that part of an elementary district that has been assigned to an independent district for the purpose of providing transportation to those students whose resident district does not offer the grade they are entitled to pursue.

(1) An independent school district assigned a high school transportation area by the State Department of Education has the duty to provide transportation to students residing in the transportation area who are entitled to pursue a grade not offered in the students' resident district, and who are enrolled in the independent district. The transportation service in the high school transportation area shall be consistent with the transportation policies of the independent district.

(2) An independent district loading and unloading students in its assigned transportation area shall confine its transportation program within the elementary district to only those students who are residents of the elementary district entitled to pursue a grade not offered in their resident district, and who are enrolled in the independent district.

(3) An independent district may not load and unload students in an elementary district whose resident district does offer the grade they are entitled to pursue, unless the boards of education of both school districts approve such transportation.

(~~1~~4) A change in transportation area made after July 1 of each year, will not become effective until the next July 1, unless all boards of education affected agree to the proposed change.

(~~2~~5) An elementary area that has been assigned to a high school transportation area may be changed to another high school transportation area by mutual agreement, in writing, by the ~~three (3)~~ boards of education of the independent school districts and the approval of the State Board of Education.

(~~3~~6) A part or all of an elementary school district that is isolated from the remainder of the school district's transportation area because of topography or previous annexations to another high school district may be changed from one high school district's transportation area to another high school district's transportation area if the State Board of Education determines the change should be made on the basis of good administration.

(~~4~~7) When an elementary school district is surrounded by an independent school district, that district must be designated as the transportation area for the high school students.

(~~5~~8) An independent school district's transportation route may extend into an elementary school district's territory to pick up students whose grade is not offered in the elementary school district~~.~~and who have transferred into the independent district. An independent district extending its routes into an elementary district in this manner must notify the elementary district of its intent, and must also notify any independent district which is assigned a transportation area in which the district wishing to provide voluntary transportation to elementary district residents intends to load and unload students. Approval by the boards of education of the elementary and assigned independent districts is not required for an independent district to provide voluntary transportation to its own enrolled students who are residents of the elementary district. Nothing in this section should be interpreted to permit an independent district to load or unload students whose resident district does offer the grade they are entitled to pursue, even if a sibling qualifies for such transportation.

(9) A district not mandated by the State Department of Education to transport students in a high school transportation area, but which chooses to do so, must transport all students who reside in the transportation area who:

(A) Are entitled to pursue a grade not offered in their resident district; and

(B) Have transferred pursuant to 70 O.S. § 8-101 into the independent district offering voluntary transportation.

(10) A district which voluntarily provides transportation to its own enrolled students who are residents of an elementary district must agree to continue the transportation arrangement until students served under the arrangement graduate. If such a district chooses to discontinue its voluntary transportation service, it may refuse to add any new students to its voluntary transportation list, but must continue to transport those already served.

(~~6~~11) ~~Upon mutual agreement of two (2) school districts, a~~An independent school district may cross a portion of another district for the purpose of loading and unloading students whose resident district does not provide the grade the students are entitled to pursue, provided the doors of the school bus are kept closed and the transporting district notifies the district(s) its bus(es) will pass through.

(c) **Petition for changing boundary lines.**

(1) ~~Seventy percent (70%) of the legal voters residing in a district who have children eligible to attend a public school (grades K through 12) or who have children under the age of five (5)~~A majority of the school district electors in an elementary district, as defined at 70 O.S. § 7-101, may petition the State Board of Education for an election to change any part or all of a district from one transportation area to another. The board of education of the district(s) receiving the proposed change in transportation area must first approve the language of the petition.

(2) The State Board of Education will approve a convenient date for an election, supply ballots, and send a representative to assist with the election.

(3) If fifty-one percent (51%) of all such legal voters in the district vote for the change, the election makes a good recommendation to the State Board of Education.

(d) **Changing areas, high school districts discontinued.** High school districts and/or elementary school districts that must be placed in one or more high school transportation area or areas because a high school has been discontinued may be placed in a transportation area or areas on the following basis:

(1) All or part of District "A" may be placed in the transportation area of high school District "B", the transportation area of which is not adjacent to District "A", provided high school District "C", which has a transportation area that separates District "A" from District "B" transportation area, appears to be in jeopardy of being discontinued itself, and provided the number of people in District "A", who want to be placed in the transportation area of District "B", justifies such an arrangement. People in District "A" requesting these arrangements to enable them to annex to District "B" will be given much more consideration than those desiring to transfer only.

(2) No portion of a school district that is adjacent to a high school district's transportation area, but is separated from the high school area by a natural barrier, will be placed in the high school district's transportation area unless or until there is a road connecting the two (2) areas that is maintained in a manner that will justify the operation of a school bus over the road across the barrier.

210:30-5-6. School buses

(a) **Equipment.**

(1) Transportation equipment used to transport ten (10) or more public school ~~children~~students at one time to any curriculum based activity or program shall meet all the minimum standards required for Types A, B, C, and D buses. For the purposes of this section, "curriculum based activity or program" shall include, but not be limited to, student attendance at a technology center.

(2) Vehicles having a seating capacity of fewer than ten (10) passengers, excluding the operator, are not required to meet the State minimum standards for school buses.

(b) **School bus inspections.**

(1) A driver shall perform a daily pre-trip safety inspection of the vehicle. The inspection shall include brakes, lights, tires, exhaust system, gauges, windshield wipers, steering and fuel. The driver shall make a daily written report describing the condition of the bus and listing any deficiencies. This report is to remain on file with the chief administrative officer of the local school district or designee of the chief administrative officer for a period of ninety (90) days.

(2) A driver shall perform a daily post-trip inspection of the interior passenger area of the vehicle to ensure that no pupils remain on the vehicle after the end of the route.

(3) A school district shall have each school bus mechanically inspected annually by an inspector approved by the Oklahoma State Department of Education.

(4) At least twice during each school year, each pupil who is transported in a school vehicle shall be instructed in safe riding practices, and participate in emergency evacuation drills. This instruction should be conducted during the first two weeks of each semester.

(c) **School bus inspector qualifications.**

(1) Any person licensed to inspect school buses by the Department of Public Safety under the Motor Vehicle Laws of Oklahoma prior to July 1, 2001, may be qualified to perform annual school bus inspections until July 1, 2014.

(2) Any person not meeting the qualifications as prescribed in (1) of this subsection may be qualified to perform the annual school bus inspection by submitting proof to the Oklahoma State Department of Education that they meet one or more of the following qualifications:

(A) Two years' experience as an automotive technician and certification by the Association for Automotive Service Excellence (ASE) in medium-heavy truck brake, transit bus brake, school bus brake, medium-heavy truck preventive maintenance inspection, or transit bus preventive maintenance inspection; or

(B) Any person qualified to perform inspections under the Federal Motor Carrier Safety Act, appendix

G. and accompanying regulations at 49 CFR 396.19 will be qualified to inspect any school bus except for the brakes. Persons qualified to inspect brakes under 49 CFR 396.25 shall be qualified to inspect the brakes on any school bus; or

(C) Successful completion of an Inspector's Training Course approved by the Oklahoma State Department of Education.

(d) **Standards and school bus specifications.**

(1) The NATIONAL MINIMUM STANDARDS FOR SCHOOL BUSES applies to school bus construction and equipment. The Oklahoma State Board of Education has accepted the various methods bus manufacturers use to meet the requirements of these standards and all requirements under the Federal Motor Vehicle Safety Standards. (P.L. 89-563) The responsibility for compliance with Federal and State bus specifications rests with dealers and manufacturers.

(2) State Standards in addition to Federal requirements also apply as follows:

(A) No school district may purchase any used or previously owned school bus unless the seller certifies prior to the sale that the bus meets all safety standards and specifications for the date of manufacture of the used bus. Any school district that purchases a used or previously owned bus without the certification regarding compliance with standards shall forfeit its state transportation aid. The seller of any used or previously owned school bus shall certify to the local board of education that any such transportation equipment meets all Oklahoma and National Standards required for the date of its manufacture.

(B) Church buses used for the purpose of transporting children to and from schools accredited by the State Department of Education shall be painted National School Bus Yellow.

(3) School districts that convert or have converted school buses to Liquefied Petroleum Gas (LPG) shall comply with safety standards prescribed by the National Fire Protection Association, Standard No. 58 (NFPA-58) and the Oklahoma Liquefied Petroleum Gas Administration. In order to ensure safe installation and proper maintenance of equipment, all personnel must also meet the following existing requirements of the Oklahoma Liquefied Petroleum Gas Administration: "No person, firm, corporation, association, or other entity shall engage in the manufacturing, assembling, fabrication, installing, or selling of any system, container, or apparatus to be used in this State in or for the transportation, storing, dispensing, or utilization of LPG, nor shall any transporter, distributor, or retailer of LPG store, dispense and/or transport over the highways of this State any LPG for use in this State in any system, container, apparatus, or appliance without having first obtained a permit to do so as provided.~~.~~"

210:30-5-8. School bus driver certification

(a) **General criteria.**

(1) Pursuant to the authority granted to the State Board of Education in 70 O.S. § 3-104(6) to regulate school bus drivers and 47 O.S. § 15-109, no board of education shall have authority to enter into any written contract with a school bus driver who does not hold a valid Oklahoma School Bus Driver's Certificate issued by the State Board of Education authorizing said bus driver to operate a school bus within the State of Oklahoma.

(2) In order to obtain and maintain a standard Oklahoma School Bus Driver's Certificate, the State Board of Education requires all public school bus drivers to:

(A) Successfully complete a school bus driver training course approved by the State Department of Education;

(B) Possess and maintain a valid Commercial Driver's License (CDL) issued by the Oklahoma State Department of Public Safety, which includes the following endorsements required by 70 O.S. § 6-110.1 in accordance with the qualifications determined by the Department of Public Safety:

(i) A school bus "S" endorsement; and

(ii) For drivers of vehicles designed to transport sixteen (16) or more passengers (including the driver), a passenger "P" endorsement; and

(C) Comply with all other health and safety qualifications set forth in this Section.

(3) No school district board of education shall assign or allow to be assigned any school bus driving duty involving the transportation of students to any employee or volunteer, regardless of contract status (e.g. coach, teacher, mechanic), unless that person has all required supporting documentation required for school bus drivers on file with the school district and a valid Oklahoma State Department of Education School Bus Driving Certificate as provided for in this section.

(~~3~~4) The State Board of Education recognizes the substantial public interest in safe school bus transportation of children. Therefore, in addition to meeting the vision standards required to obtain a CDL from the Department of Public Safety, in order to obtain a standard or emergency Oklahoma School Bus Driver's Certificate, all school bus drivers must have:

(A) A visual acuity of not less than twenty-forty (20/40) (Snellen) in each eye with or without corrective lenses; and

(B) Not less than twenty-forty (20/40) (Snellen) with both eyes with or without corrective lenses; and

(C) A minimum field of vision of 70 degrees horizontal median vision in each eye.

(~~4~~5) The use of tobacco by a school bus driver is not permitted during the operation of the bus while hauling pupils. The use of any intoxicating or non-intoxicating alcoholic beverage by the driver eight (8) hours prior to or during the operation of a school bus is strictly prohibited. The use of any controlled dangerous substance seventy-two (72) hours prior to or during the operation of a school bus is strictly prohibited. The possession of any

controlled dangerous substance on a school bus is strictly prohibited.

(~~5~~6) All school bus drivers shall have an annual health certificate signed by a physician licensed by this state filed in the office of the chief administrative officer of the local school district or designee of the chief administrative officer attesting that such physician has examined the applicant and that the applicant has no sign or symptoms of ill health, and is otherwise, from the observation of such physician, physically and mentally capable of safely operating a school bus. As an alternative to the annual physical examination requirements for school bus drivers, school districts may adopt a policy that utilizes a biannual physical examination, provided the examination is in compliance with the physical qualifications and examination requirements at Subpart E of the Federal Motor Carrier Safety Regulations, 49 CFR §§ 391.41 to 391.50.

(~~6~~7) Substitute and activity school bus drivers shall meet all the requirements prescribed for regular bus drivers.

(~~7~~8) At a minimum, the chief administrative officer of the local school district or designee of the chief administrative officer shall conduct an annual driving record check of all school bus drivers, including substitute and activity drivers. The Oklahoma State Department of Education shall be immediately notified of any violation(s) that make a school bus driver ineligible to hold an Oklahoma School Bus Driver's Certificate.

(~~8~~9) The State Board of Education shall revoke the bus driver's certificate of any holder who fails to comply with the provisions of this Section.

(~~9~~10) School districts who fail to comply with the provisions of this section shall be subject to penalty pursuant to 210:30-5-2.

(b) **School bus driver certificate requirements.**

(1) The chief administrative officer of the local school district or designee of the chief administrative officer shall certify to the State Department of Education that each applicant submitted for Standard Five-Year Certification:

(A) Is at least 18 years of age;

(B) Has successfully completed a special school bus drivers' course approved by the State Department of Education;

(C) Holds a valid Commercial Drivers license (CDL) appropriate for the type of vehicle driven with the proper endorsements required by the Department of Public Safety;

(D) Has not been convicted of a felony, or pled guilty or nolo contendere to a felony during the last ten years; and

(E) Has passed a driving record check, and no certificate shall be issued to any person who, within the preceding three (3) years:

(i) Has had a license suspended or revoked, canceled or withdrawn pursuant to the Implied Consent Laws at 47 O.S. § 751 et seq.;

(ii) Has a conviction for a violation of 47 O.S. § 11-902 which includes driving, operating or being in actual physical control of a vehicle while under the influence of alcohol or any intoxicating drug;

(iii) Has been convicted or plead guilty to a violation of 47 O.S. § 761, operating a motor vehicle while impaired by consumption of alcohol;

(iv) Has been convicted of any municipal violation of driving under the influence of alcohol or drugs or operating a motor vehicle while impaired or being in actual physical control of a motor vehicle while impaired; or

(v) Has had four (4) or more traffic violations (excluding parking violations).

(2) The chief administrative officer of the local school district or designee of the chief administrative officer shall certify to the State Department of Education that the applicant for an Emergency One-Year School Bus Driver Certificate (Not Renewable):

(A) Is at least 18 years of age;

(B) Holds a valid Commercial Driver's License with the proper endorsements required by the Department of Public Safety; and

(C) Has passed a driving record check and meets the requirements set forth in (1)(D)-(E) of this subsection.

(3) Requirements for Renewal of the Standard Five-Year Certificate include:

(A) Every five (5) years, each driver shall have successfully completed four (4) hours per year of inservice training approved by the State Department of Education;

(B) The chief administrative officer of the local school district or designee of the chief administrative officer shall certify to the State Department of Education that the applicant meets all requirements for standard certification; [47 O.S. § 15-109]

(C) Each applicant has a health certificate on file signed by a licensed physician and meets all vision requirements;

(D) Each applicant has not been convicted or pled guilty to a felony in the last ten (10) years;

(E) The applicant's driving record has been checked and meets all other State Board of Education requirements for certification; and

(F) Notwithstanding the provisions of this paragraph, in order to renew any school bus driver certificate which has been expired for more than one year, a driver must successfully complete a renewal course approved by the State Department of Education. Such a course must, at a minimum, include topics on:

(i) Railroad crossings;

(ii) Emergency evacuation procedures;

(iii) Mirror placement;

(iv) Pick-up and drop-off procedures;

(v) Sound driving practices; and

(vi) Accident procedures.

(4) During the period that the application for issuance of a new or renewed school bus driver certificate is pending, applicants must immediately notify the State

Department of Education Transportation Section of any arrest, citation, or conviction of any disqualifying offense set forth in (1)(E) of this subsection; any moving violation; or any involvement in a traffic accident.

(c) **Certification of drivers with a monocular vision condition.**

(1) Individuals who wish to obtain an Oklahoma School Bus Driver's Certificate and meet all other requirements of this Section, but cannot meet the vision requirements in (a)(3) of this Section in both eyes due to the presence of a monocular vision condition, may obtain an exemption from the vision requirements of (a)(3) of this Section by providing evidence showing that Applicant is exempt from the requirements of 49 C.F.R. § 391.41, has fully adapted to the monocular vision condition, and is capable of safely operating a school bus for the purpose of transporting school children. Such evidence must consist of documentation for each one of the following:

(A) Documentation establishing that Applicant's vision condition has been present and unchanged for three years or more prior to the application for an exemption from the vision requirements of (a)(3) of this Section;

(B) Documentation establishing that Applicant has experience in safely operating a Commercial Motor Vehicle with the monocular vision condition within the three (3) year period immediately preceding the date of the application for an exemption from the vision requirements of (a)(3) of this Section; and

(C) One of the following:

(i) An authority letter issued by the Oklahoma State Department of Public Safety (DPS) qualifying the individual as exempt from the vision requirements of 49 C.F.R. § 391.41; or

(ii) A letter or waiver issued by the Federal Motor Carrier Safety Administration (FMCSA) documenting that the applicant has received a waiver from the vision requirements of 49 C.F.R. § 391.41.

(2) Documentation of the evidence required by (1)(A) of this subsection shall consist of documentation for each one of the following:

(A) Applicant must have been examined by a licensed ophthalmologist or optometrist within sixty (60) days prior to obtaining the Commercial Driver License and within one year of applying for the State Department of Education monocular vision exemption. Applicant must provide the State Department of Education a copy of the official Oklahoma State Department of Public Safety vision form documenting the examination.

(B) In addition, if not included on the official Oklahoma State Department of Public Safety vision form, Applicant must submit additional documentation, in which a licensed ophthalmologist or optometrist identifies and describes:

(i) The nature of the vision deficiency, including how long the individual has had the deficiency;

(ii) The date of the examination;

(iii) Whether the applicant's vision is stable;

(iv) The visual acuity of each eye, corrected and uncorrected;

(v) The field of vision of each eye, including central and peripheral fields, testing to at least 120 in the horizontal. (Formal perimetry is required. The doctor must submit the formal perimetry test for each eye and interpret the results in degrees of field of vision.);

(vi) Whether the applicant has the ability to recognize the colors of traffic control signals and devices showing red, green, and amber; and

(vii) The ophthalmologist/optometrist's medical opinion as to whether the individual has sufficient vision to perform the driving tasks required to operate a school bus.

(3) Documentation of the evidence required by (1)(B) of this subsection shall consist of each of the following:

(A) Applicant must provide documentation of experience in operating a commercial motor vehicle (as defined by 47 O.S. §§ 1-107.1, 1-107.2, or 1-107.3) while the Applicant has a monocular vision condition for the three (3) year period immediately preceding the date of this application which includes the following information:

(i) For any applicant employed as a driver of a commercial motor vehicle, the DOT # or ICC# of Applicant's employer(s); for any applicant with driving experience as an independent motor carrier, a list of names, addresses, and phone numbers of customers for whom Applicant performed transportation services through the operation of a commercial motor vehicle on public highways;

(ii) A list of all dates (month/date/year) during the three (3) year period for which Applicant performed services driving and/or operating a commercial motor vehicle, and the number of hours driven per week; and

(iii) A list of all types of commercial motor vehicles operated by Applicant and gross vehicle weight rating ("GVWR") of each vehicle operated by Applicant;

(B) Acceptable forms of required documentation of the Applicant's driving experience described in (3) of this paragraph may include either:

(i) A signed, notarized statement from the individual's present or past employer(s) on company letterhead; or

(ii) An affidavit by the Applicant.

(C) Applicant shall provide the State Department of Education with a Motor Vehicle Report demonstrating that applicant's driving record during the three (3) year period prior to the date the application is filed:

(i) Contains no suspensions or revocations of Applicant's driver's license for the operation of

any motor vehicle (including Applicant's personal vehicle);

(ii) Contains no record of involvement in an accident involving negligence attributable to the monocular vision condition;

(iii) Contains no record of a serious traffic offense attributable to the monocular vision condition (e.g., erratic unsafe lane changes, following too closely, etc.)

(4) Individuals who receive the vision exemption to drive a bus for an accredited school in Oklahoma must submit to their employer a copy of the documentation required by (1)(C) of this subsection.

(d) **Certification of drivers with insulin-dependent diabetes mellitus.**

(1) Any person with diabetes mellitus requiring insulin by injection shall not be eligible for a school bus certificate unless the individual meets all other requirements of (a) and (b) of this Section, and the individual possesses and maintains either:

(A) An authority letter issued by the Oklahoma State Department of Public Safety (DPS) qualifying the individual as exempt from the physical requirements of 49 C.F.R. § 391.41; or

(B) A letter or waiver issued by the Federal Motor Carrier Safety Administration (FMCSA) documenting that the applicant has received a waiver from the physical requirements of 49 C.F.R. § 391.41.

(2) Upon hire, exempted individuals will be required to agree to and comply with the following conditions:

(A) Blood glucose levels shall be self-monitored one (1) hour prior to driving and at least once every four (4) hours while driving a school bus or on duty by using a portable glucose monitoring device with a computerized memory, and take corrective action if necessary;

(B) The individual shall maintain blood glucose logs, three months from the current date (or the date that insulin use began, whichever is shorter).

(i) If the employing district has cause to require a medical evaluation as authorized by (5) of this subsection, logs maintained pursuant to this subsection must be provided to the Oklahoma board certified medical doctor (MD) or doctor of osteopathy (DO) treating the individual.

(ii) Blood glucose logs must be created by an electronic blood glucose meter that stores every reading, records date and time of reading, and from which data can be downloaded and printed.

(C) The individual shall carry a source of rapidly absorbable glucose at all times while operating a school bus; and

(D) The individual shall meet the annual physical examination requirements for drivers with metabolic diseases set forth by the Department of Public Safety in OAC 595:10-5.

(E) The individual shall notify the Department of Public Safety and the State Department of Education of any changes in physical or mental ailments or conditions which may cause loss of control or partial control or may otherwise render the individual incapable of properly controlling a school bus.

(3) Superintendents or their designees who hire individuals who hold a diabetes exemption certification must keep on file in a separate medical record:

(A) A current copy of the diabetes exemption certificate of the individual;

(B) The contact information of the board certified medical doctor (MD) or doctor of osteopathy (DO) who is treating the individual;

(C) Record of the annual medical certification issued by the board certified medical doctor (MD) or doctor of osteopathy (DO) pursuant to (1)(B) of this subsection; and

(D) Copies of any medical certifications obtained pursuant to (5) of this subsection.

(4) An individual holding a diabetes exemption certificate shall immediately notify the superintendent (or the superintendent's designee) of the school district in which the individual is employed if the individual's blood glucose level is outside of a range of 100 mg/dl to 400 mg/dl one (1) hour prior to driving. Upon receipt of such notice, the superintendent or the superintendent's designee shall not allow the individual holding the diabetes exemption certificate to drive. If the individual's blood glucose level is below 100 mg/dl or above 400 mg/dl, then the driver cannot operate a school bus or transport school children as an employee of any school district until the blood glucose measure is within the target range.

(5) In the event an individual holding a diabetes exemption is involved in an incident directly caused by the individual's diabetic condition, the individual cannot operate a school bus or transport school children as an employee of any school district until the individual has been certified in writing as medically able to safely resume work related duties by the Oklahoma board certified medical doctor (MD) or doctor of osteopathy (DO) by whom they are being treated.

[OAR Docket #15-485; filed 6-12-15]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 35. STANDARDS FOR ACCREDITATION OF ELEMENTARY, MIDDLE LEVEL, SECONDARY, AND CAREER AND TECHNOLOGY SCHOOLS

[OAR Docket #15-486]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 3. Standards for Elementary, Middle Level, Secondary, and Career and Technology Schools

Part 5. Standard III: Administration and Organization
210:35-3-47. School reports and records [AMENDED]

AUTHORITY:
70 O.S. § 3-104; 70 O.S. § 24-116; State Board of Education

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APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 8, 2015

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SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
The amendments provide guidance on the State Department of Education's authorization under 70 O.S. § 24-116 to issue a high school diploma to a person who has completed at least thirty (30) hours of credit at an accredited college or university.

CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 3. STANDARDS FOR ELEMENTARY, MIDDLE LEVEL, SECONDARY, AND CAREER AND TECHNOLOGY SCHOOLS

PART 5. STANDARD III: ADMINISTRATION AND ORGANIZATION

210:35-3-47. School reports and records

Well-delineated policies and procedures for records and reports shall be developed and kept current.

(1) Records and reports needed for effective planning, operation, evaluation, and reporting shall be kept relative to the following components of the educational program:

(A) Administrative operations
(B) Curriculum
(C) Guidance
(D) Health services
(E) Instructional supplies
(F) Media services
(G) School Plant
(H) Staff
(I) Student activities
(J) Student personnel

(2) The permanent record of the student, including social security number as permitted by law, shall be current and filed in the superintendent's or principal's office. Standardized test results, student's school activities, attendance and citizenship dates shall be included as a part of the permanent records. Proper safeguards shall be taken with these records to protect the confidentiality of individuals and the human rights of all students. Health and immunization records should be kept separately. ~~[Reference: 74:311; SL Section 764.2 Use of Social Security Numbers Prohibited - Exceptions]~~

(3) One person in each school shall be responsible for all personally identifiable information to assure that no unauthorized person will be able to obtain the information without written parental permission.

(4) Students shall be officially enrolled upon receipt of their immunization records as required by law and transcripts or grade cards. Information pertaining to grades, graduation tests, college admission test, rank in class of graduating seniors, and other pertinent information shall be recorded on the transcript. ~~[Reference: 70:1210.191; SL Section 700 Immunization of Child Before First Admission To School]~~

(5) Principals shall furnish transcripts and immunization records of students within three business days when requested to do so by school officials.

(6) School administrators shall be familiar with and assure compliance with state attendance laws.

(7) Attendance records shall be completed and made available for auditing at the close of the school year. The principal or a competent person under his or her supervision shall record the attendance daily.

(A) Pupils absent from school in which they are regularly enrolled may be considered as being in attendance if the reason for such absence is to participate in scheduled school activities under the direction and supervision of a regular member of the faculty.

(B) Closing classroom work early for seniors for commencement or other activities is prohibited by the State Board of Education. Any school district which does not require students to attend school for the full term shall be in violation of the State Board of Education policy and shall be cited for the violation on the final accreditation report as presented for approval by the State Board of Education for the upcoming school year.

(C) Classroom activities and instruction shall continue until the end of the school term. Students given excused absences during examination periods, for sickness or any other reason, shall not be counted as being in attendance.

(8) Attendance records and teachers' grade books shall be filed with the district superintendent or his/her designee at the close of the school year.

(9) Permanent records of staff and students shall be retained in the school.

(10) Any person who has completed at least thirty (30) hours of college credit at an accredited college or university in Oklahoma may be awarded a high school diploma by the State Department of Education, upon written request and verification of supporting documentation.

(A) A person wishing to apply for a diploma under these provisions must submit a written request to the State Department of Education. This request must be submitted with an official copy of the diploma applicant's transcript from an Oklahoma college or university showing at least thirty (30) credit hours earned.

(B) An official copy of the applicant's transcript may be submitted in either hard copy or electronic form. Acceptance of an official transcript in electronic form may require direct submission to the State Department of Education by the diploma applicant's college or university.

(C) Any person who has previously been an Oklahoma student and has earned at least thirty (30) hours of college credit at an accredited college or university may apply for a diploma under this section, regardless of whether the credits were earned at an institution located in Oklahoma. A former Oklahoma student applying for a diploma after earning credits from an accredited college or university outside Oklahoma must submit an official transcript showing credits earned, as well as documentation showing that the applicant was previously an Oklahoma student.

[OAR Docket #15-486; filed 6-12-15]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 35. STANDARDS FOR ACCREDITATION OF ELEMENTARY, MIDDLE LEVEL, SECONDARY, AND CAREER AND TECHNOLOGY SCHOOLS

[OAR Docket #15-487]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Standards for Elementary, Middle Level, Secondary, and Career and Technology Schools
Part 9. Standard V: The School Staff
210:35-3-86. Qualifications; personnel records [AMENDED]
AUTHORITY:
70 O.S. § 3-104; State Board of Education
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
October 24, 2014
COMMENT PERIOD:
November 17, 2014 through December 19, 2014
PUBLIC HEARING:
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January 29, 2015
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Approved by Governor's Declaration on June 8, 2015
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June 8, 2015
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August 27, 2015
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The amendments strike outdated references, and extend the acceptable formats for teachers' and nurses' official transcripts kept on file by a school district to include digital copies sent electronically by the educational institution that issues the transcript.
CONTACT PERSON:
Lori Murphy, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Telephone number: (405) 522-5260

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 3. STANDARDS FOR ELEMENTARY MIDDLE LEVEL, SECONDARY, AND CAREER AND TECHNOLOGY SCHOOLS

PART 9. STANDARD V: THE SCHOOL STAFF

210:35-3-86. Qualifications; personnel records

(a) All professional personnel, with the exception of some instructors in Career Technology programs, shall hold a baccalaureate degree from an accredited institution, provide evidence of adequate professional education preparation, meet the certification standards of Oklahoma, and be assigned to teach in areas for which they are certified.

(b) The superintendent who is the administrative head of the school system shall hold a valid Oklahoma superintendent's certificate. The Technology Center superintendent who is the administrative head of the school system shall also hold the technology center superintendent endorsement issued by the State Board of Education. In addition, the technology center superintendent shall have a Standard Area School Administrator Credential which is issued by the Oklahoma Department of Career and Technology Education.

(c) A deputy or assistant superintendent shall hold the same certification/credentials as the superintendent.

(d) Administrative assistants shall have education training or experience appropriate to their responsibilities.

(e) ~~Beginning with the 1991-1992 school year, any~~Any administrative assistant whose responsibilities include the supervision of certificated personnel and/or educational program shall hold a valid administrative certificate appropriate to the grade level(s) that he/she supervises.

(f) Other professional staff shall hold the appropriate certification for their job assignment.

(g) Official up-to-date transcripts showing the work of all ~~secondary, elementary, elementary district~~ school teachers and nurses in all districts shall be kept on file during the year in the office of the superintendent with copies at school sites. All districts shall also keep on file during the year, in the office of the site principal and the superintendent. Districts may accept official transcripts from educational institutions in either hard copy or electronic form. Acceptance of an official transcript in electronic form may require direct submission to the State Department of Education by the educational institution.

[OAR Docket #15-487; filed 6-12-15]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 35. STANDARDS FOR ACCREDITATION OF ELEMENTARY, MIDDLE LEVEL, SECONDARY, AND CAREER AND TECHNOLOGY SCHOOLS

[OAR Docket #15-488]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 25. Student Entrance and Progression Through the System
210:35-25-2. Student entrance and progression through the system [AMENDED]
AUTHORITY:
70 O.S. § 3-104; 70 O.S. § 11-103.6; State Board of Education
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
October 24, 2014
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Approved by Governor's Declaration on June 8, 2015
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SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The amendments clarify that academic credits received from one school district or state-accredited private school in Oklahoma shall transfer to another school district or accredited private school upon a student's transfer to a different district or school site. The procedure for a transfer of credits received outside Oklahoma is also addressed.
CONTACT PERSON:
Lori Murphy, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Telephone number: (405) 522-5260

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 25. STUDENT ENTRANCE AND PROGRESSION THROUGH THE SYSTEM

210:35-25-2. Student entrance and progression through the system

The local board of education shall develop local policies, procedures and requirements for the entrance and progression of students through the educational programs of the local school system. The local board of education shall also determine the local graduation requirements for students which may exceed those of the State Board of Education. Local board of education policies and procedures shall provide, as a minimum, the following provisions:

(1) All children between the ages of 5 and 21 on or before September 1 shall be entitled to attend the school free of charge in the district in which they reside or are legally transferred. Students shall be placed in an appropriate educational level based upon documentation of competency in the current Oklahoma curriculum.

(2) Students entering an accredited school from a school not accredited by the State Board of Education shall be tested for placement. All student placement assessments shall be administered by the receiving accredited school and the results shall be kept on file for one year.

(3) A student entering an accredited school in Oklahoma who previously attended a different accredited school in Oklahoma shall receive credit in the receiving school for courses completed at the previous school. Completion of a course that satisfied a specific graduation requirement in the previous school district or State-accredited private school shall apply toward the same requirement in the subsequent school district or State-accredited private school.

(4) A student entering an accredited school in Oklahoma who previously attended an accredited or similarly qualified school outside Oklahoma shall receive credit for courses completed at any previous schools that are correlated with the academic content of courses required for graduation in Oklahoma. Credit for a course shall only be transcripted as elective credit if there is no correlation between the academic content of the course and a course required for graduation in Oklahoma.

(~~3~~5) Students demonstrating competency in a curriculum subject shall receive credit. Credit can also be given for the successful completion of a Carnegie Unit. A Carnegie Unit is defined as a course that meets 40 minutes a day, five days per week for at least 36 weeks, or the equivalent of 120 clock hours within the school year, or the equivalent in block scheduling. Educational options such as correspondence courses, independent study and certain internet instruction will also be considered appropriate methods for earning credit. However, correspondence, independent study courses and internet instruction shall

not be included within the minimum 38 required units of credit offered at a comprehensive high school.

(~~4~~6) A student must demonstrate competency in or successfully complete at least 21 units of credit which must include the state-mandated curriculum and meet all other state and local mandates to be eligible for graduation. Beginning in the 2002-2003 school year a student must successfully complete 23 units of credit for the Standard Diploma.

[OAR Docket #15-488; filed 6-12-15]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 35. STANDARDS FOR ACCREDITATION OF ELEMENTARY, MIDDLE LEVEL, SECONDARY, AND CAREER AND TECHNOLOGY SCHOOLS

[OAR Docket #15-489]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 29. Alternative Education Academies, Programs and Schools
210:35-29-2. Definitions [AMENDED]
210:35-29-7. Abbreviated day schedule [AMENDED]
210:35-29-8. Requirements for alternative education programs [NEW]
AUTHORITY:
70 O.S. § 3-104; 70 O.S. § 1210.567; 70 O.S. § 568; State Board of Education
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
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n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The amendments to 210:35-29-2 and 210:35-29-7 and the new rule at 210:35-29-8 provide additional guidance regarding alternative education programs, and make updates pursuant to statutory changes. The rules provide flexibility to school districts in structuring an alternative education program by adding a total hours per school year option in addition to the abbreviated hours-per-day option previously codified, pursuant to the addition of a 1,080 hour school year option to 70 O.S. § 1-109 and § 1-111 as an alternative to a 180 day school year. The rules also establish additional definitions, and outline statutory requirements for alternative education programs.
CONTACT PERSON:
Lori Murphy, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Telephone number: (405) 522-5260

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 29. ALTERNATIVE EDUCATION ACADEMIES, PROGRAMS AND SCHOOLS

210:35-29-2. Definitions

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

"Alternative Education" means an educational process incorporating appropriate structure, curriculum, interaction, and reinforcement strategies to stimulate learning with students who have not utilized their capacity to do so within traditional educational settings. Alternative education programs must meet all requirements listed at 70 O.S. § 1210.568 and at section 210:35-29-7 of this title.

"Abbreviated school day" means, for purposes of an alternative education program approved by the State Board of Education~~, a school day which consists of not less than four (4) hours and 12 minutes per day devoted to school activities for the locally approved 180 day school calendar.~~:

(A) A school day which consists of not less than four (4) hours and twelve (12) minutes per day devoted to academic instruction for the locally approved 180 day school calendar; or

(B) A school day which may consist of less than four (4) hours and twelve (12) minutes per day devoted to academic instruction, provided that students in alternative education programs receive at least seven hundred fifty-six (756) hours of academic instruction per school year. A school district that chooses the total instructional hours scheduling approach for its alternative education program must notify the State Board of Education by September 15 of each applicable school year.

"Academic instruction" means, for purposes of an alternative education program approved by the State Board of Education:

(A) Instruction in any subject offered by the school district for core or elective credit, whether part of the standard educational program or offered specifically to students in the alternative education program;

(B) Instruction in any subject offered for credit through a technology center or through concurrent enrollment at a college or university; and

(C) Participation in programs and activities that are part of the school district or interlocal cooperative's approved Alternative Education Implementation Plan and are intended to fulfill the requirements for alternative education programs, including counseling, life skills instruction, concurrent enrollment, work study,

and other content approved by the State Board of Education.

"At-risk student" means a student whose present or expected status indicates they might fail to complete their secondary education for reasons which may include academic deficiency, behavioral difficulties, excessive absences, pregnancy or parenting, family issues, substance abuse, financial issues, physical or mental health issues, juvenile justice involvement, or other such factors, not including disability status.

210:35-29-7. Abbreviated day schedule

Abbreviated day schedules may be adopted by alternative education schools and alternative education programs, pursuant to 70 O.S. § 1210.567. Students attending approved abbreviated day alternative education schools and alternative education programs for the full abbreviated day shall be counted in attendance for purposes of computing average daily attendance and average daily membership for the district. Abbreviated day schedules for alternative education schools and programs must conform to one of the definitions of "abbreviated school day" listed at 210:35-29-2.

210:35-29-8. Requirements for alternative education programs

(a) **General requirements.** To qualify as an approved alternative education program, a school district's alternative school or alternative education program must meet all requirements listed at 70 O.S. § 1210.568, including:

(1) Student-teacher ratios conducive to effective learning for at-risk students;

(2) Appropriate structure, curriculum, interaction, and reinforcement strategies for effective instruction;

(3) An intake and screening process to determine eligibility of students;

(4) Appropriately certified teaching faculty;

(5) Teaching faculty with experiences or personal traits that qualify them for successful work with at-risk students;

(6) Collaboration with state and local agencies;

(7) Courses that meet the curricular standards adopted by the State Board of Education and additional remedial courses;

(8) Individualized instruction;

(9) Clear and measurable program goals and objectives;

(10) Counseling and social service components;

(11) Graduation plan for each student;

(12) Life skills instruction;

(13) Opportunities for arts education;

(14) A proposed annual budget;

(15) An evaluation component that includes an annual written self-evaluation;

(16) Service to students in grades six (6) through twelve (12) who are most at risk of not completing high school for reasons other than disability; and

(17) Opportunities for student participation in vocational programs and extra-curricular activities such as athletics, band, and clubs.

(b) **Submission of alternative education plan.** Each school district shall submit and certify an Alternative Education Implementation Plan to the State Department of Education by September 15 of each year. This plan shall outline how the district will meet the criteria listed in subsection (a) to serve its at-risk students. The plan must be submitted and certified by school districts providing their own alternative education programs, as well as districts which offer alternative education through interlocal cooperative arrangements, and districts which have no alternative education program and receive no alternative education funding.

(c) **Deregulation not necessary for conforming alternative education programs.** A school district need not apply to the State Board of Education for a deregulation in order to implement an alternative education program that meets all requirements listed in this subchapter and at 70 O.S. § 1210.566 through 70 O.S. § 1210.568.

[OAR Docket #15-489; filed 6-12-15]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 4. RULES OF PRACTICE AND PROCEDURE

[OAR Docket #15-553]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 7. Environmental Permit Process
Part 7. Water Quality Division Tiers and Time Lines
252:4-7-76. UIC applications -Tier I [AMENDED]
252:4-7-77. UIC applications - Tier II [AMENDED]
252:4-7-78. UIC applications - Tier III [AMENDED]
AUTHORITY:
Environmental Quality Board; Oklahoma Environmental Quality Code 27A O.S. §2-1-101; Water Quality Management Advisory Council 27A O.S. §2-2-201.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 7, 2014
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N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed rulemaking is to amend section 76 UIC applications-Tier I, section 77 UIC applications-Tier II, and section 78 UIC applications-Tier III of subchapter 7 Water Quality Division Tiers and Time Lines, which describes underground injection control authorizations requiring Tier I, Tier II and Tier

III applications. The proposed rulemaking will make it possible to apply to DEQ for a Class V injection well permit for disposal of drinking water treatment residuals into a Class II-D well, permitted by OCC by submitting a Tier I application. The proposed rulemaking is intended to reduce the burden of drinking water treatment residuals management for communities that are faced with increasing water demands and have difficulties meeting surface water discharge standards for the disposal of the drinking water treatment residuals.

CONTACT PERSON:

The contact person is Hillary Young, Chief Engineer, Land Protection Division. She can be reached at Hillary.Young@deq.ok.gov (e-mail), (405) 702-5100 (phone) or (405) 702-5101 (fax). The DEQ is located at 707 N. Robinson, Oklahoma City, Oklahoma 73102. The mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2015:

SUBCHAPTER 7. ENVIRONMENTAL PERMIT PROCESS

PART 7. WATER QUALITY DIVISION TIERS AND TIME LINES

252:4-7-76. UIC applications - Tier I

The following underground injection control authorizations require Tier I applications.

(1) Minor modification of a permit for Class I, III, and V wells in accordance with 40 CFR §144.41.

(2) Modification of an approved closure and/or post-closure plan for a Class I hazardous waste injection well.

(3) Modification of an approved plugging and abandonment plan for Class I nonhazardous and Class III injection wells.

(4) Modification of an approved corrective action plan for a Class I injection well.

(5) Emergency permit in accordance with 40 CFR § 144.34.

(6) Minor administrative modification of all permits and other authorizations.

(7) Class V injection well permit, or modification, for disposal of drinking water treatment residuals into a Class II-D injection well permitted by the Oklahoma Corporation Commission.

252:4-7-77. UIC applications - Tier II

The following underground injection control authorizations require Tier II applications.

(1) On-site Class I nonhazardous waste injection well permit.

(2) Class III and V injection well permits except Class V permits issued under Tier I or III.

(3) Modification and/or renewal of all DEQ-issued underground injection control well permits, except Class V permits issued under Tier I.

(4) Work plan authorizations for the construction and testing of geological reconnaissance test wells intended to demonstrate compliance with UIC siting criteria.

252:4-7-78. UIC applications - Tier III

The following underground injection control authorizations require Tier III applications.

(1) Class I hazardous waste injection well permit.

(2) Off-site Class I nonhazardous waste injection well permit.

(3) Class V industrial waste injection well permit, except Class V permits issued under Tier I.

[OAR Docket #15-553; filed 6-15-15]

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

[OAR Docket #15-549]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 2. Incorporation by Reference
252:100-2-3. [AMENDED]
Appendix Q. Incorporation by Reference [REVOKED]
Appendix Q. Incorporation by Reference [NEW]
AUTHORITY:
Environmental Quality Board, 27A O.S. Sections 2-2-101 and 2-2-201; and Oklahoma Clean Air Act, 27A O.S. Sections 2-5-101 *et seq.*
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
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FINAL ADOPTION:
June 8, 2015
EFFECTIVE:
September 15, 2015
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
Incorporated standards as they existed on September 1, 2014:
Date of 40 CFR provisions incorporated by reference in Appendix Q of this Chapter has been changed to as "as they existed on September 1, 2014." In addition, various 40 CFR provisions have been added or revised in Appendix Q incorporations by reference.
Incorporating rules:
252:100-2-3
Appendix Q. Incorporation By Reference

Availability:

The standards are on file at the Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma, 73102, and are available to the public for examination Monday through Friday between the hours of 8:00 a.m. and 4:30 p.m., excluding state holidays.

ANALYSIS:

The Department is proposing to update OAC 252:100, Appendix Q, Incorporation by Reference, to incorporate the latest changes to U.S. Environmental Protection Agency (EPA) regulations, including the addition of a new Subpart BBa in 40 CFR, Part 60, which applies to certain facilities at Kraft pulp mills, and Table A-1 to Subpart A of Part 98 containing the Global Warming Potentials for use in determining carbon dioxide equivalent (CO2e) emissions for use in greenhouse gas (GHG) regulations. In addition, the Department is proposing to update language in Subchapter 2, Incorporation by Reference, to reflect the latest date of incorporation of EPA regulations in Appendix Q.

CONTACT PERSON:

Cheryl Bradley, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-4100.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2015:

SUBCHAPTER 2. INCORPORATION BY REFERENCE

252:100-2-3. Incorporation by reference

Except as provided under this section, the provisions of 40 CFR listed in Appendix Q are hereby incorporated by reference as they existed on ~~November 1, 2013~~September 1, 2014.

(1) **Inclusion of 40 CFR citations and definitions.** When a provision of 40 CFR is incorporated by reference, all citations contained therein are also incorporated by reference.

(2) **Inconsistencies or duplications of requirements or incorporation dates.**

(A) In the event that there are inconsistencies or duplications between the requirements of this Chapter and the requirements of those provisions incorporated by reference in Appendix Q or elsewhere in this Chapter, the more stringent requirements shall apply.

(B) In the event that a specific date of incorporation is indicated in Appendix Q or a subchapter of this Chapter, the specified date of incorporation shall apply.

(3) **Terminology related to 40 CFR.** For purposes of interfacing with 40 CFR and unless the context clearly indicates otherwise, the following terms apply.

(A) "Administrator" is synonymous with "Executive Director."

(B) "U. S. Environmental Protection Agency" or "EPA" is synonymous with "Department of Environmental Quality or "DEQ".

APPENDIX Q. INCORPORATION BY REFERENCE [REVOKED]

APPENDIX Q. INCORPORATION BY REFERENCE [NEW]

Except as provided under OAC 252:100-2-3, the following provisions of Title 40 of the Code of Federal Regulations are hereby incorporated by reference as they existed on September 1, 2014, unless otherwise noted.

PART	SUBPART	DESCRIPTION
50	n/a	Appendix B to Part 50 - Reference Method for the Determination of Suspended Particulate Matter in the Atmosphere (High-Volume Method)
50	n/a	Appendix J to Part 50 - Reference Method for the Determination of Particulate Matter as PM_{10} in the Atmosphere
51	F	Paragraph 51.100(s)(1) only of Subpart F, Procedural Requirements
51	n/a	Appendix P to Part 51 - Minimum Emission Monitoring Requirements
58	n/a	Appendix A to Part 58 - Quality Assurance Requirements for SLAMS, SPMs and PSD Air Monitoring
60	A	General Provisions [Except 60.4, 60.9, 60.10 and 60.16]
60	D	Standards of Performance for Fossil-Fuel-Fired Steam Generators
60	Da	Standards of Performance for Electric Utility Steam Generating Units
60	Db	Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units
60	Dc	Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units
60	E	Standards of Performance for Incinerators
60	Ea	Standards of Performance for Municipal Waste Combustors for Which Construction is Commenced After December 20, 1989 and on or Before September 20, 1994
60	Eb	Standards of Performance for Large Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994 or for Which Modification or Reconstruction is Commenced After June 19, 1996

PART	SUBPART	DESCRIPTION
60	Ec	Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996
60	F	Standards of Performance for Portland Cement Plants
60	G	Standards of Performance for Nitric Acid Plants
60	Ga	Standards of Performance for Nitric Acid Plants for Which Construction, Reconstruction, or Modification Commenced After October 14, 2011
60	H	Standards of Performance for Sulfuric Acid Plants
60	I	Standards of Performance for Hot Mix Asphalt Facilities
60	J	Standards of Performance for Petroleum Refineries
60	Ja	Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007
60	K	Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978
60	Ka	Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984
60	Kb	Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984
60	L	Standards of Performance for Secondary Lead Smelters
60	M	Standards of Performance for Secondary Brass and Bronze Production Plants
60	N	Standards of Performance for Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973
60	Na	Standards of Performance for Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983

PART	SUBPART	DESCRIPTION
60	O	Standards of Performance for Sewage Treatment Plants
60	P	Standards of Performance for Primary Copper Smelters
60	Q	Standards of Performance for Primary Zinc Smelters
60	R	Standards of Performance for Primary Lead Smelters
60	S	Standards of Performance for Primary Aluminum Reduction Plants
60	T	Standards of Performance for the Phosphate Fertilizer Industry: Wet-Process Phosphoric Acid Plants
60	U	Standards of Performance for the Phosphate Fertilizer Industry: Superphosphoric Acid Plants
60	V	Standards of Performance for the Phosphate Fertilizer Industry: Diammonium Phosphate Plants
60	W	Standards of Performance for the Phosphate Fertilizer Industry: Triple Superphosphate Plants
60	X	Standards of Performance for the Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities
60	Y	Standards of Performance for Coal Preparation and Processing Plants
60	Z	Standards of Performance for Ferroalloy Production Facilities
60	AA	Standards of Performance for Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974, and On or Before August 17, 1983
60	AAa	Standards of Performance for Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 17, 1983
60	BB	Standards of Performance for Kraft Pulp Mills
60	BBa	Standards of Performance for Kraft Pulp Mill Affected Sources for Which Construction, Reconstruction, or Modification Commenced After May 23, 2013
60	CC	Standards of Performance for Glass Manufacturing Plants
60	DD	Standards of Performance for Grain Elevators
60	EE	Standards of Performance for Surface Coating of Metal Furniture

PART	SUBPART	DESCRIPTION
60	GG	Standards of Performance for Stationary Gas Turbines
60	HH	Standards of Performance for Lime Manufacturing Plants
60	KK	Standards of Performance for Lead-Acid Battery Manufacturing Plants
60	LL	Standards of Performance for Metallic Mineral Processing Plants
60	MM	Standards of Performance for Automobile and Light Duty Truck Surface Coating Operations
60	NN	Standards of Performance for Phosphate Rock Plants
60	PP	Standards of Performance for Ammonium Sulfate Manufacture
60	QQ	Standards of Performance for the Graphic Arts Industry: Publication Rotogravure Printing
60	RR	Standards of Performance for Pressure Sensitive Tape and Label Surface Coating Operations
60	SS	Standards of Performance for Industrial Surface Coating: Large Appliances
60	TT	Standards of Performance for Metal Coil Surface Coating
60	UU	Standards of Performance for Asphalt Processing and Asphalt Roofing Manufacture
60	VV	Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for which Construction, Reconstruction, or Modification Commenced After January 5, 1981, and on or Before November 7, 2006
60	VVa	Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006
60	WW	Standards of Performance for the Beverage Can Surface Coating Industry
60	XX	Standards of Performance for Bulk Gasoline Terminals
60	BBB	Standards of Performance for the Rubber Tire Manufacturing Industry
60	DDD	Standards of Performance for Volatile Organic Compound

PART	SUBPART	DESCRIPTION
		(VOC) Emissions from the Polymer Manufacturing Industry
60	FFF	Standards of Performance for Flexible Vinyl and Urethane Coating and Printing
60	GGG	Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries for which Construction, Reconstruction, or Modification Commenced After January 4, 1983, and on or Before November 7, 2006
60	GGGa	Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006
60	HHH	Standards of Performance for Synthetic Fiber Production Facilities
60	III	Standards of Performance for Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes
60	JJJ	Standards of Performance for Petroleum Dry Cleaners
60	KKK	Standards of Performance for Equipment Leaks of VOC From Onshore Natural Gas Processing Plants
60	LLL	Standards of Performance for SO_2 Emissions From Onshore Natural Gas Processing: SO_2 Emissions
60	NNN	Standards of Performance for Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations
60	OOO	Standards of Performance for Nonmetallic Mineral Processing Plants
60	PPP	Standard of Performance for Wool Fiberglass Insulation Manufacturing Plants
60	QQQ	Standards of Performance for VOC Emissions From Petroleum Refinery Wastewater Systems
60	RRR	Standards of Performance for Volatile Organic Compound Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes
60	SSS	Standards of Performance for Magnetic Tape Coating Facilities
60	TTT	Standards of Performance for Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines

PART	SUBPART	DESCRIPTION
60	UUU	Standards of Performance for Calciners and Dryers in Mineral Industries
60	VVV	Standards of Performance for Polymeric Coating of Supporting Substrates Facilities
60	WWW	Standards of Performance for Municipal Solid Waste Landfills
60	AAAA	Standards of Performance for Small Municipal Waste Combustion Units for Which Construction is Commenced After August 30, 1999 or for Which Modification or Reconstruction is Commenced After June 6, 2001
60	CCCC	New Source Performance Standards for Commercial/Industrial Solid Waste Incinerators constructed after November 30, 1999
60	DDDD	Emissions Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units, Model Rule only, Sections 60.2575 through 60.2875, including Tables 1 through 9
60	EEEE	Standards of Performance for Other Solid Waste Incineration Units for Which Construction Is Commenced After December 9, 2004, or for Which Modification or Reconstruction Is Commenced on or After June 16, 2006
60	IIII	Standards of Performance for Stationary Compression Ignition Internal Combustion Engines
60	JJJJ	Standards of Performance for Stationary Spark Ignition Internal Combustion Engines
60	KKKK	Standards of Performance for Stationary Combustion Turbines
60	LLLL	Standards of Performance for New Sewage Sludge Incineration Units
60	OOOO	Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution
60	n/a	Appendix A to Part 60 - Test Methods
60	n/a	Appendix B to Part 60 - Performance Specifications
61	A	General Provisions
61	C	National Emission Standard for Beryllium
61	D	National Emission Standard for Beryllium Rocket Motor Firing
61	E	National Emission Standard for Mercury

PART	SUBPART	DESCRIPTION
61	F	National Emission Standard for Vinyl Chloride
61	J	National Emission Standard for Equipment Leaks (Fugitive Emission Sources) of Benzene
61	L	National Emission Standard for Benzene Emissions from Coke By-Product Recovery Plants
61	M	National Emission Standard for Asbestos
61	N	National Emission Standard for Inorganic Arsenic Emissions From Glass Manufacturing Plants
61	O	National Emission Standard for Inorganic Arsenic Emissions From Primary Copper Smelters
61	P	National Emission Standard for Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities
61	V	National Emission Standard for Equipment Leaks (Fugitive Emission Sources)
61	Y	National Emission Standard for Benzene Emissions From Benzene Storage Vessels
61	BB	National Emission Standard for Benzene Emissions From Benzene Transfer Operations
61	FF	National Emission Standard for Benzene Waste Operations
63	A	General Provisions
63	B	Sections 63.41, 63.43 and 63.44 only of Subpart B, Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections, Sections 112(g) and 112(j)
63	F	National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry
63	G	National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater
63	H	National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks

PART	SUBPART	DESCRIPTION
63	I	National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks
63	J	National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production
63	L	National Emission Standards for Coke Oven Batteries
63	M	National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities
63	N	National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks
63	O	Ethylene Oxide Emissions Standards for Sterilization Facilities
63	Q	National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers
63	R	National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations)
63	S	National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry
63	T	National Emission Standards for Halogenated Solvent Cleaning
63	U	National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins
63	W	National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non-Nylon Polyamides Production
63	X	National Emission Standards for Hazardous Air Pollutants from Secondary Lead Smelting
63	Y	National Emission Standards for Marine Tank Vessel Loading Operations
63	AA	National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants
63	BB	National Emission Standards for Hazardous Air Pollutants From Phosphate Fertilizers Production Plants
63	CC	National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries

PART	SUBPART	DESCRIPTION
63	DD	National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations
63	EE	National Emission Standards for Magnetic Tape Manufacturing Operations
63	GG	National Emission Standards for Aerospace Manufacturing and Rework Facilities
63	HH	National Emission Standards for Hazardous Air Pollutants From Oil and Natural Gas Production Facilities
63	II	National Emission Standards for Shipbuilding and Ship Repair (Surface Coating)
63	JJ	National Emission Standards for Wood Furniture Manufacturing Operations
63	KK	National Emission Standards for the Printing and Publishing Industry
63	LL	National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants
63	MM	National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills
63	OO	National Emission Standards for Tanks - Level 1
63	PP	National Emission Standards for Containers
63	QQ	National Emission Standards for Surface Impoundments
63	RR	National Emission Standards for Individual Drain Systems
63	SS	National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process
63	TT	National Emission Standards for Equipment Leaks – Control Level 1
63	UU	National Emission Standards for Equipment Leaks - Control Level 2 Standards
63	VV	National Emission Standards for Oil-Water Separators and Organic-Water Separators
63	WW	National Emission Standards for Storage Vessels (Tanks) -

PART	SUBPART	DESCRIPTION
		Control Level 2
63	XX	National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations
63	YY	National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards
63	CCC	National Emission Standards for Hazardous Air Pollutants for Steel Pickling - HCl Process Facilities and Hydrochloric Acid Regeneration Plants
63	DDD	National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production
63	EEE	National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors
63	GGG	National Emission Standards for Pharmaceuticals Production
63	HHH	National Emission Standards for Hazardous Air Pollutants From Natural Gas Transmission and Storage Facilities
63	III	National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production
63	JJJ	National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins
63	LLL	National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry
63	MMM	National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production
63	NNN	National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing
63	OOO	National Emission Standards for Hazardous Air Pollutant Emissions: Manufacture of Amino/Phenolic Resins
63	PPP	National Emission Standards for Hazardous Air Pollutant Emissions for Polyether Polyols Production
63	QQQ	National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting
63	RRR	National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production

PART	SUBPART	DESCRIPTION
63	TTT	National Emission Standards for Hazardous Air Pollutants for Primary Lead Smelting
63	UUU	National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units
63	VVV	National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works
63	XXX	National Emission Standards for Hazardous Air Pollutants for Ferroalloys Production: Ferromanganese and Silicomanganese
63	AAAA	National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills
63	CCCC	National Emission Standards for Hazardous Air Pollutants: Manufacturing of Nutritional Yeast
63	DDDD	National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products
63	EEEE	National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline)
63	FFFF	National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing
63	GGGG	National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production
63	HHHH	National Emission Standards for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production
63	IIII	National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks
63	JJJJ	National Emission Standards for Hazardous Air Pollutants: Paper and Other Web Coating
63	KKKK	National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans
63	MMMM	National Emission Standards for Hazardous Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products
63	NNNN	National Emission Standards for Hazardous Air Pollutants: Surface Coating of Large Appliances
63	OOOO	National Emission Standards for Hazardous Air Pollutants:

PART	SUBPART	DESCRIPTION
		Printing, Coating, and Dyeing of Fabrics and Other Textiles
63	PPPP	National Emission Standards for Hazardous Air Pollutants for Surface Coating of Plastic Parts and Products
63	QQQQ	National Emission Standards for Hazardous Air Pollutants: Surface Coating of Wood Building Products
63	RRRR	National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Furniture
63	SSSS	National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Coil
63	TTTT	National Emission Standards for Hazardous Air Pollutants for Leather Finishing Operations
63	UUUU	National Emission Standards for Hazardous Air Pollutants for Cellulose Products Manufacturing
63	VVVV	National Emission Standards for Hazardous Air Pollutants for Boat Manufacturing
63	WWWW	National Emissions Standards for Hazardous Air Pollutants: Reinforced Plastic Composites Production
63	XXXX	National Emissions Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing
63	YYYY	National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines
63	ZZZZ	National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines
63	AAAAA	National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants
63	BBBBB	National Emission Standards for Hazardous Air Pollutants for Semiconductor Manufacturing
63	CCCCC	National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks
63	DDDDD	National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters
63	EEEEE	National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries

PART	SUBPART	DESCRIPTION
63	FFFFF	National Emission Standards for Hazardous Air Pollutants for Integrated Iron and Steel Manufacturing Facilities
63	GGGGG	National Emission Standards for Hazardous Air Pollutants: Site Remediation
63	HHHHH	National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing
63	IIIII	National Emission Standards for Hazardous Air Pollutants: Mercury Emissions From Mercury Cell Chlor-Alkali Plants
63	JJJJJ	National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing
63	KKKKK	National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing
63	LLLLL	National Emission Standards for Hazardous Air Pollutants: Asphalt Processing and Asphalt Roofing Manufacturing
63	MMMMM	National Emission Standards for Hazardous Air Pollutants: Flexible Polyurethane Foam Fabrication Operations
63	NNNNN	National Emission Standards for Hazardous Air Pollutants: Hydrochloric Acid Production
63	PPPPP	National Emission Standards for Hazardous Air Pollutants for Engine Test Cells/Stands
63	QQQQQ	National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities
63	RRRRR	National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing
63	SSSSS	National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing
63	TTTTT	National Emission Standards for Hazardous Air Pollutants for Primary Magnesium Refining
63	UUUUU	National Emission Standards for Hazardous Air Pollutants: Coal and Oil-fired Electric Utility Steam Generating Units
63	WWWWW	National Emission Standards for Hospital Ethylene Oxide Sterilizers
63	YYYYY	National Emission Standards for Hazardous Air Pollutants for Area Sources: Electric Arc Furnace Steelmaking Facilities

PART	SUBPART	DESCRIPTION
63	ZZZZZ	National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries Area Sources
63	BBBBBB	National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities
63	CCCCCC	National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities
63	DDDDDD	National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production Area Sources
63	EEEEEE	National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting Area Sources
63	FFFFFF	National Emission Standards for Hazardous Air Pollutants for Secondary Copper Smelting Area Sources
63	GGGGGG	National Emission Standards for Hazardous Air Pollutants for Primary Nonferrous Metals Area Sources - Zinc, Cadmium, and Beryllium
63	HHHHHH	National Emission Standards for Hazardous Air Pollutants: Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources
63	JJJJJJ	National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers Area Sources
63	LLLLLL	National Emission Standards for Hazardous Air Pollutants for Acrylic and Modacrylic Fibers Production Area Sources
63	MMMMMM	National Emission Standards for Hazardous Air Pollutants for Carbon Black Production Area Sources
63	NNNNNN	National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources: Chromium Compounds
63	OOOOOO	National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production and Fabrication Area Sources
63	PPPPPP	National Emission Standards for Hazardous Air Pollutants for Lead Acid Battery Manufacturing Area Sources
63	QQQQQQ	National Emission Standards for Hazardous Air Pollutants for Wood Preserving Area Sources

PART	SUBPART	DESCRIPTION
63	RRRRRR	National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing Area Sources
63	SSSSSS	National Emission Standards for Hazardous Air Pollutants for Glass Manufacturing Area Sources
63	TTTTTT	National Emission Standards for Hazardous Air Pollutants for Secondary Nonferrous Metals Processing Area Sources
63	VVVVVV	National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources
63	WWWWWW	National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Plating and Polishing Operations
63	XXXXXX	National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Nine Metal Fabrication and Finishing Source Categories
63	YYYYYY	National Emission Standards for Hazardous Air Pollutants for Area Sources: Ferroalloys Production Facilities
63	ZZZZZZ	National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Aluminum, Copper, and Other Nonferrous Foundries
63	AAAAAAA	National Emission Standards for Hazardous Air Pollutants for Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing
63	BBBBBBB	National Emission Standards for Hazardous Air Pollutants for Area Sources: Chemical Preparations Industry
63	CCCCCCC	National Emission Standards for Hazardous Air Pollutants for Area Sources: Paints and Allied Products Manufacturing
63	DDDDDDD	National Emission Standards for Hazardous Air Pollutants for Area Sources: Prepared Feeds Manufacturing
63	EEEEEEE	National Emission Standards for Hazardous Air Pollutants: Gold Mine Ore Processing and Production Area Source Category
63	HHHHHHH	National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production
64	n/a (All Sections)	Compliance Assurance Monitoring (CAM)
72	All Subparts	Permits Regulation
98	A	Table A-1 to Subpart A of Part 98 – Global Warming Potentials

PART	SUBPART	DESCRIPTION
241	n/a	Solid Wastes Used as Fuels or Ingredients in Combustion Units

[OAR Docket #15-549; filed 6-15-15]

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

[OAR Docket #15-550]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Incorporation by Reference
252:205-3-1 [AMENDED]
AUTHORITY:
Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-2-201, 2-2-104, 2-7-105 and 2-7-106
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
August 8, 2014
COMMENT PERIOD:
September 2 through October 9, 2014
PUBLIC HEARING:
October 9, 2014 and November 13, 2014
ADOPTION:
November 13, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
November 17, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 8, 2015
FINAL ADOPTION:
June 8, 2015
EFFECTIVE DATE:
September 15, 2015
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATION BY REFERENCE:
Incorporated standards:
Date of 40 CFR provisions incorporated by reference in these rules is changed to "as amended through July 1, 2014"
Incorporating rules:
252:205-3-1
Availability:
From the contact person listed below
ANALYSIS:
The Oklahoma Department of Environmental Quality is proposing to amend Chapter 205 Subchapter 3, Incorporation by Reference (OAC 252:205-3-1), to reflect changes to the federal regulations through July 1, 2014. This amendment is to ensure equivalency with the applicable federal regulations as required to maintain the DEQ's status as an authorized hazardous waste program.
CONTACT PERSON:
Mike Edwards (405) 702-5226, 707 North Robinson, Oklahoma City, Oklahoma 73102. Mailing address is P.O. Box 1677, Oklahoma City, OK 73101-1677. E-mail address is mike.edwards@deq.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2015:

SUBCHAPTER 3. INCORPORATION BY REFERENCE

252:205-3-1. Reference to 40 CFR

(a) Incorporation date. Except as provided in subsection (b), when reference is made to Title 40 of the Code of Federal Regulations (40 CFR), it shall mean (unless otherwise specified) the Hazardous Waste Regulations, Monday, May 19, 1980, as amended through July 1, ~~2012~~2014.

(b) Excluded provisions. None of the revisions to 40 CFR published at 73 FR 64668 - 64788 (October 30, 2008), "Revisions to the Definition of Solid Waste: Final Rule" are incorporated herein.

[OAR Docket #15-550; filed 6-15-15]

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

[OAR Docket #15-551]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Chapter 303. TNI Laboratory Accreditation [REVOKED]
AUTHORITY:
Environmental Quality Board powers and duties, 27A O.S. § 2-2-101; the Water Quality Management Advisory Council powers and duties, 27A O.S. § 2-2-201; and the Environmental Quality Code, Laboratory Certification Services, 27A O.S. § 2-4-301 *et seq*.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
May 9, 2014
COMMENT PERIOD:
June 2, 2014 - July 2, 2014
PUBLIC HEARING:
Before the Water Quality Management Advisory Council on July 8, 2014.
Before the Environmental Quality Board on November 13, 2014.
ADOPTION:
November 13, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
November 17, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 8, 2015
FINAL ADOPTION:
June 8, 2015
EFFECTIVE:
September 15, 2015
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The revocation of Chapter 303 is progressing in tandem with the adoption of the new Chapter 307 also titled TNI Laboratory Accreditation. Chapter 303 was not implemented and is to be replaced with Chapter 307 due to inconsistency with TNI Standards language and difficulty in enforcing the rule as previously written.
CONTACT PERSON:
David Caldwell, State Environmental Laboratory Services Division, Department of Environmental Quality, P.O. Box 1677, Oklahoma City, OK 73101-1677, e-mail at david.caldwell@deq.ok.gov, phone 405-702-1000, or fax 405-702-1001.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED ADOPTED AS SET FORTH IN 75 O.S., SECTIONS

250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2015:

SUBCHAPTER 1. GENERAL PROVISIONS [REVOKED]

252:303-1-1. Purpose, basis, authority, applicability, and implementation date [REVOKED]

~~(a) The rules in this Chapter provide standards for accreditation of privately and publicly owned laboratories for performance of analyses of water and wastewater, solid and hazardous waste, soil, sludge and petroleum hydrocarbons. This Chapter was promulgated and adopted pursuant to the Oklahoma Environmental Quality Code (Code), 27A O.S. § 2-4-101 *et seq.*, and shall apply to laboratories certified or applying to be accredited by the Department of Environmental Quality consistent with The NELAC Institute (TNI) Standards.~~

~~(b) As the Board promulgates new rules, accredited laboratories shall incorporate those procedures for all accredited analytes upon the effective date of the rule.~~

~~(c) The implementation date of this Chapter is January 1, 2016.~~

252:303-1-2. Accreditation exception [REVOKED]

~~Operational testing analyses for municipal wastewater treatment systems and water supply systems may be submitted to the DEQ by an unaccredited laboratory if, at the time of the analyses, the laboratory was operated by an individual certified by the DEQ as a laboratory operator and the certified laboratory operator approves and signs the analyses report. For further explanation, refer to and comply with the following rules:~~

~~(1) Oklahoma Pollutant Discharge Elimination System Standards (OPDES), OAC 252:606-11-2;~~

~~(2) Public Water Supply Operations, OAC 252:631-3-2; and~~

~~(3) Waterworks and Wastewater Works Operator Certification OAC 252:710-5-53.~~

252:303-1-3. Definitions [REVOKED]

~~In addition to the definitions contained in the Environmental Quality Code (27A O.S. § 2-1-101 et seq.) and OAC 252:4 (Department of Environmental Quality Rules of Practice and Procedure), the following words or terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise.~~

~~**"Acceptable results"**, as defined in 27A O.S. § 2-4-101, means a result within limits determined on the basis of statistical procedures as prescribed by the Department.~~

~~**"Accreditation"** means the process by which the DEQ recognizes a laboratory as meeting certain predetermined qualifications or standards, thereby accrediting the laboratory.~~

~~**"Analyte"** means the characteristics of a laboratory sample determined by an analytical laboratory testing procedure and is synonymous with "parameter". For purposes of this Chapter, "analyte" also means one of a set of inorganic or organic chemical, physical, radiochemical or microbiological properties whose value determines the characteristics of a water or wastewater sample.~~

~~**"Applicant"** means the owner of a laboratory, or a representative authorized by the owner to act on the owner's behalf, seeking accreditation from the DEQ.~~

~~**"Applicant laboratory"** means the laboratory and its owner or authorized representative for which an application for accreditation has been filed with the DEQ.~~

~~**"Approved method"** means an analytical test method which has been required by law or is recognized by the DEQ as acceptable for a specific usage.~~

~~**"Basic environmental laboratory"** means a laboratory that is limited to the following analytes: five day biochemical oxygen demand, carbonaceous biochemical oxygen demand, chemical oxygen demand, total organic carbon (TOC), total Kjeldahl nitrogen (TKN), nitrate nitrite nitrogen, organic nitrogen, ammonia nitrogen, total dissolved solids (filterable residue), total suspended solids (non filterable residue), volatile residue, total phosphorous, orthophosphate phosphorus (reactive phosphorus), chloride, fluoride, oil and grease, sulfate, pH, specific conductance, dissolved oxygen, turbidity, total residual chlorine, hardness, alkalinity, color, fecal coliform, total coliform, cyanide, phenolics, copper, zinc, iron, sulfide, chromium, and hexavalent chromium.~~

~~**"Blind audit"** means a process whereby the DEQ or any other designated agent submits proficiency testing samples to an accredited laboratory in a manner such that the laboratory is not aware of the process.~~

~~**"Certificate"** is defined in 27A O.S. § 2-4-101 and means the same as laboratory accreditation and includes primary accreditation and reciprocity accreditation.~~

~~**"Corrective Action Plan"** or **"Corrective Action Report"** is a written plan of action, including a schedule for implementation, to correct deficiencies or findings identified in the DEQ or DEQ approved agent's inspection report, including a timeline for implementation; or to eliminate the causes of an existing nonconformity, defect or other undesirable situation in order to prevent its recurrence.~~

~~**"DEQ"** means the Oklahoma Department of Environmental Quality. For purposes of certifications issued and enforcement matters arising prior to July 1, 1993, "DEQ" also means predecessor agencies of the DEQ which had jurisdiction over environmental water quality laboratories on June 30, 1993.~~

~~**"Evaluation"**, as defined in 27A O.S. § 2-4-101, means a review of the quality control and quality assurance procedures, recordkeeping, reporting procedures, methodology, personal qualifications, equipment, facilities and analytical technique of a laboratory for measuring or establishing specific parameters.~~

~~**"Finding"** means an assessment conclusion, referenced to a TNI Standard and supported by objective evidence that identifies a deviation from a TNI requirement.~~

~~**"Initial accreditation"** means a first time accreditation granted to a laboratory not previously accredited by the DEQ.~~

~~**"Interim accreditation"** means temporary accreditation status for a laboratory that has met all accreditation criteria except for a pending on-site assessment which has been delayed for reasons beyond the control of the laboratory.~~

~~**"Laboratory"**, as defined in 27A O.S. § 2-4-101, means *a facility that performs analyses to determine the chemical, physical or biological properties of air, water, solid waste, hazardous waste, wastewater or soil or subsoil materials or performs any other analyses related to environmental quality evaluations.* "Laboratory" includes mobile laboratories.~~

~~**"Laboratory waste"** means by-products of the analytical process, residues of samples analyzed, discarded reagents or standards and any materials contaminated by any of these.~~

~~**"Mobile laboratory"** means a mobile facility that performs analyses in a self-contained environment with professional analytical instrumentation, excluding field testing of those analytes that require immediate measurement on site (conductivity, residual chlorine, pH, dissolved oxygen, temperature).~~

~~**"Owner"** means the sole proprietor of an individually owned laboratory, the controlling or managing partner of a laboratory held by a partnership, the major stockholders of a corporate owned laboratory, or a municipality or other local government entity which owns or operates a laboratory.~~

~~**"Parameter"** is defined in 27A O.S. § 2-4-101 and is synonymous with "analyte".~~

~~**"Primary accreditation body" (PAB)** means the accreditation body responsible for assessing a laboratory's total quality system, on-site assessment, and proficiency testing (PT) performance tracking for fields of accreditation.~~

~~**"Proficiency testing (PT) sample"** means a sample submitted to a laboratory by the DEQ or other designated agent for the purpose of assessing the ability of the laboratory to correctly analyze samples using an approved method.~~

~~**"Program"** means the DEQ laboratory accreditation program.~~

~~**"QA Plan" or "Quality Assurance Plan"** means a written description of quality assurance activities (quality control) that will ensure the generation of data that are scientifically valid, defensible and of known and acceptable limits of precision and accuracy.~~

~~**"Secondary accreditation body"** means an accreditation body that grants laboratory accreditation for a field of accreditation based on recognition of accreditation from a Primary Accreditation Body for the same field of accreditation.~~

~~**"SOP manual"** or **"Standard Operating Procedure manual"** means a document approved by a laboratory director that includes approved methods, equipment and instruments used by the laboratory for analyses.~~

~~**"TNI"** means The NELAC Institute. NELAC means the National Environmental Laboratory Accreditation Conference, which was an association of federal and state agencies established to develop and promote consistent performance standards for analytical testing of environmental samples and the laboratory accreditation process in environmental laboratories in order to generate data of known and acceptable quality upon which the agencies could base public health and environmental management decisions.~~

252:303-1-4. Terms [REVOKED]

~~Terms used in this Chapter shall have the meanings given to them in OAC 252:303-1-3 or the Oklahoma Environmental Quality Code. Any technical term not defined thereby shall be defined by its generally accepted scientific meaning or its standard dictionary meaning.~~

252:303-1-5. Accreditation programs and types [REVOKED]

~~(a) **Programs.** Laboratories may be accredited in Drinking Water, General Water Quality, and/or Petroleum Hydrocarbons.~~

~~(b) **Types of accreditation.** An applicant laboratory may apply at any time for initial, interim or renewal accreditation. A laboratory applying for interim accreditation shall meet the same requirements as a laboratory applying for initial accreditation.~~

252:303-1-6. Drinking water laboratory [REVOKED]

~~A drinking water laboratory may be accredited in the following category groups: metals, general chemistry, microbiology, asbestos, non-volatile synthetic organic chemicals (SOCs), volatile organic compounds (VOCs) and/or radionuclides.~~

252:303-1-7. General water quality laboratory [REVOKED]

~~A general water quality laboratory may be accredited in the following category groups: metals, nutrients, demands, extractable organics, general chemistry I and/or II, microbiology, pesticides - herbicides - PCBs, purgeable organics, radiological, bioassay, hazardous waste characterization, petroleum hydrocarbons, perchlorate, and/or basic environmental laboratory.~~

252:303-1-8. Petroleum hydrocarbon laboratory [REVOKED]

~~A petroleum hydrocarbon laboratory may be accredited in the following category groups: Total Petroleum Hydrocarbons (TPH), Benzene, Toluene, Ethylbenzene, and Xylene (BTEX), Flash Point, and MTBE.~~

252:303-1-9. Fees [REVOKED]

~~(a) **Applicable fees.** The following fees apply:~~

~~(1) Initial accreditation $1,183.00~~
~~(2) Interim accreditation 696.00~~
~~(3) Renewal fee 35.31~~
~~(4) Renewal late fee 347.86~~
~~(5) Accreditation amendment 69.57~~
~~(6) Fee for 1 category 488.05~~
~~(7) Fee for 2 categories 976.09~~
~~(8) Fee for 3 categories 1,464.14~~
~~(9) Fee for 4 categories 1,952.18~~
~~(10) Fee for 5 or more categories 2,440.23~~
~~(11) Inspections 0~~

~~(b) **Renewal.** Fees to renew accreditation consist of the renewal application fee and the applicable category fee.~~

~~(c) **Public water supply system fee exemption.** There is no laboratory accreditation fee for public water supply systems that pay the minimum annual public water supply regulatory service rate fee in accordance with 27A O.S. § 2-6-306.~~

~~(d) **Annual fee adjustment.** To assist in meeting rising costs to the DEQ of the environmental services and regulatory programs associated with the laboratory services program, the fees set out in this Section shall be automatically adjusted on July 1st every year to correspond to the percentage, if any, by which the Consumer Price Index (CPI) for the most recent calendar year exceeds the CPI for the previous calendar year. The DEQ may round the adjusted fees up to the nearest dollar. The DEQ may waive collection of an automatic increase in a given year if it determines other revenues, including appropriated state general revenue funds, have increased sufficiently to make the funds generated by the automatic adjustment unnecessary in that year. A waiver does not affect future automatic adjustments.~~

~~(1) Any automatic fee adjustment under this subsection may be averted or eliminated, or the adjustment percentage may be modified, by rule promulgated pursuant to the Oklahoma Administrative Procedures Act. The rulemaking process may be initiated in any manner provided by law, including a petition for rulemaking pursuant to 75 O.S. § 305 and OAC 252:4-5-3 by any person affected by the automatic fee adjustment.~~

~~(2) If the United States Department of Labor ceases to publish the CPI or revises the methodology or base years, no further automatic fee adjustments shall occur until a new automatic fee adjustment rule is promulgated pursuant to the Oklahoma Administrative Procedures Act.~~

~~(3) For purposes of this subsection, "Consumer Price Index" or "CPI" means the Consumer Price Index - All Urban Consumers (U.S. All Items, Current Series, 1982-1984=100, CUUR0000SA0) published by the United States Department of Labor. The CPI for a calendar year is the figure denoted by the Department of Labor as the "Annual" index figure for that calendar year.~~

252:303-1-10. Withdrawal from TNI [REVOKED]

~~If a laboratory wishes to withdraw from TNI, in total or in part, it must notify the primary accreditation body in writing.~~

SUBCHAPTER 3. LABORATORY ACCREDITATION PROCESS [REVOKED]

PART 1. APPLICATION [REVOKED]

252:303-3-1. Application required [REVOKED]

~~(a) **General.** A laboratory shall submit one copy of an application for primary accreditation or secondary accreditation to the DEQ. Application forms are available on the DEQ's website. Applications shall be accurately completed, signed and submitted to the DEQ electronically or by mail, with all required attachments.~~

~~(b) **Application fees.** Fees shall be submitted to the DEQ at the same time that applications are submitted. Applications shall not be considered until fees are received.~~

~~(c) **Signature and verification.** An application shall be signed by the sole proprietor of an individually owned laboratory, the controlling or managing partner or partners of a laboratory held by a partnership, the authorized agent of a corporate owned laboratory, or the principal executive officer or ranking elected official of a municipality or other local government entity which owns or operates the applicant laboratory. The signer shall verify in the application that it was prepared under his direction or supervision and that the information it contains is, to the best of his knowledge, true, accurate and complete.~~

~~(d) **Secondary accreditation.** Applicants for secondary accreditation shall submit information required by 252:303-3-2. It is not necessary to submit information required in 252:303-3-3.~~

~~(e) **Certification of Compliance.** A "Certification of Compliance" statement must accompany the application for laboratory accreditation in accordance with the 2009 TNI Standard. The statement must be signed and dated by both the laboratory management and the quality assurance officer, or other designated person, for that laboratory. The certification statement must contain at least the following statements: "The applicant understands and acknowledges that the laboratory is required to be continually in compliance with the (insert the name of the primary accreditation body) standards and is subject to the enforcement and penalty provisions of that accreditation body. I hereby certify that I am authorized to sign this application on behalf of the applicant/owner and that there are no misrepresentations in my answer to the questions on this application."~~

~~(f) **Processing.** Applications for primary and secondary accreditation shall be processed in the chronological order in which they are received.~~

~~(g) **TNI Standards.** Laboratories shall obtain the TNI Standards for use in their accredited laboratory programs.~~

252:303-3-2. Contact information [REVOKED]

~~In addition to other information required by this Chapter, an application shall contain the following information:~~

~~(1) The name, mailing address, street address, telephone number, e-mail address and telefax number (if any) of the applicant.~~

~~(2) The signature, typewritten name, address, telephone number and telefax number (if any) of the authorized representative of the owner.~~

~~(3) The name, mailing address, street address, telephone and telefax number (if any) of the applicant laboratory's authorized technical representative.~~

~~(4) The location(s) (address or legal description) of the laboratory, including county and driving directions and latitude/longitude.~~

~~(5) Identification of the accreditation type and categories, analytes and/or methods sought.~~

~~(6) The name and address of any owner, stockholder, or officer of the applicant laboratory or an person who receives compensation from the applicant laboratory, who has been or currently is an owner, stockholder, or officer of, or who has received compensation from, any laboratory whose accreditation application has been previously denied or whose accreditation has been previously suspended or revoked in part or in whole by the DEQ.~~

252:303-3-3. Operational information [REVOKED]

~~The application for primary accreditation shall address the following operational issues:~~

~~(1) A listing of equipment to be used for sample analysis, storage and reporting.~~

~~(2) A description of the methods, equipment and instruments used by the applicant laboratory for specific analytes which may be in the form of an SOP manual when required.~~

~~(3) A written laboratory QA plan which includes but is not limited to:~~

~~(A) A listing of laboratory personnel, including the laboratory director, which gives the academic training, experience and analytical and supervisory responsibilities of each; and~~

~~(B) A narrative description of the methods used for sample receipt, storage and disposal.~~

~~(4) Results of laboratory's two most recent proficiency testing rounds, at least 15 calendar days apart.~~

~~(5) A report of a laboratory inspection conducted by the DEQ or a DEQ approved agent within the twelve (12) months prior to the date of filing or, for in-state laboratories only, a letter requesting the DEQ to conduct an on-site inspection. The inspection report shall verify data submitted in an application, list any deficiencies and be signed by the DEQ or DEQ approved agent.~~

~~(6) If deficiencies are listed in an inspection report, the applicant shall submit a corrective action plan which specifies deadlines for implementation and completion of the plan. The DEQ may establish conditions, including compliance schedules, for the applicant's corrective action plan.~~

~~(7) Hours of operation.~~

252:303-3-4. Reasons to deny an initial application [REVOKED]

~~(a) An intial application for accreditation shall be denied in the following circumstances:~~

~~(1) Failure to submit a completed application;~~

~~(2) Failure to pay required fees;~~

~~(3) Failure of laboratory staff to meet the personnel qualifications of education, training and experience as required by theTNI standards;~~

~~(4) Failure to successfully analyze and report proficiency testing samples as required by the TNI standards;~~

~~(5) Failure to respond to an assessment report from the on-site assessment with a corrective action report within the 30 calendar days after receipt of the assessment report;~~

~~(6) Failure to implement the corrective actions detailed in the corrective action report within the specified time frame as approved by the primary accreditation body;~~

~~(7) Failure to implement a quality system as defined in the TNI standards;~~

~~(8) Failure to pass required on-site assessment(s) as specified in the TNI standards;~~

~~(9) Misrepresentation of any fact pertinent to receiving or maintaining accreditation; or~~

~~(10) Denial of entry during normal business hours for an on-site assessment as required by the TNI standards.~~

~~(b) If the laboratory is not successful in correcting the deficiencies as required by TNI standards, the laboratory must wait six months before again reapplying for accreditation.~~

~~(c) Laboratory accreditation will not be denied without the right to due process as addressed in OAC 252: 4, Rules of Practice and Procedure.~~

252:303-3-5. Renewals [REVOKED]

~~(a) **Annual renewal required.** A laboratory must apply to renew accreditation annually. Renewal applications are available on the DEQ's website. Renewal applications shall be accurately completed, signed and submitted to the DEQ electronically on or before June 15 of each year.~~

~~(b) **Laboratory responsibility.** Each laboratory is responsible for renewing its accreditation by the annual renewal date. Failure to receive a renewal notification and invoice does not exempt laboratories from meeting the renewal deadline.~~

~~(c) **DEQ invoice date.** By April 15 of each year, the DEQ shall mail invoices to each accredited laboratory.~~

~~(d) **Deadline.** All applicable fees shall be submitted to the DEQ by 4:30 p.m. on or before June 15 or postmarked on or before that date. Any renewal application which is not received electronically by the DEQ on or before June 15 shall be considered only if the electronic application form, renewal fee and a late fee are submitted on or before July 15. Applications and fees received or postmarked after July 15 will be returned and accreditation shall not be renewed.~~

~~(d) **PT provider.** Laboratories shall ensure that the PT provider has submitted all pertinent PT reports to the DEQ electronically or postmarked on or before July 15 of each year. PTs received later than 4:30 p.m. on July 15 of each year will not be considered for accreditation renewal.~~

~~(e) **Specified dates.** If any date specified in this section falls on a weekend or holiday, the date of the following working day shall be the effective date.~~

~~(f) **Failure to renew.** To become accredited again, a laboratory that failed to renew its accreditation in a timely manner must apply for initial accreditation as a new laboratory.~~

PART 3. CONDITIONS OF ACCREDITATION [REVOKED]

252:303-3-21. Conditions applicable to all accreditations [REVOKED]

~~The following conditions shall apply to all existing accreditations and shall be incorporated expressly or by reference into~~

~~all accreditations issued or renewed after the effective date of this Chapter.~~

~~(1) **Proper operation and maintenance.** The Laboratory shall at all times properly operate and maintain all facilities and equipment installed or used by the Laboratory to achieve compliance with the laboratory accreditation requirements of the Code, rules of the Board as they relate to laboratory accreditation, and the provisions and conditions of this Accreditation. Proper operation and maintenance includes effective performance of operations and adequate funding, operator staffing and training, and the provision of appropriate sample handling equipment. All operational practices and procedures used at this site shall conform to the best possible public health and safety practices.~~

~~(2) **Duty to mitigate.** The Laboratory shall take all reasonable steps to minimize or correct any adverse impact on the environment and the public health resulting from noncompliance with this Accreditation and to minimize or correct any adverse impact on the environment arising from its analytical activities.~~

~~(3) **Duty to provide information.** The Laboratory shall furnish to the DEQ, within a time specified, any information which the DEQ may request to determine:~~

~~(A) whether cause exists for amending, suspending, or revoking this Accreditation;~~

~~(B) compliance with this Accreditation; or~~

~~(C) whether an accreditation should be issued or renewed.~~

~~(4) **Records.** The Laboratory shall keep its Accreditation, the application on which it is based, copies of all records required to be kept by OAC 252:302 and the provisions of its Accreditation on file at the accredited facility.~~

~~(5) **Reporting requirements.** The Laboratory shall give advance notice to the DEQ as soon as possible of any planned physical alterations, additions to the accredited facility or planned changes in the accredited facility which may result in noncompliance with accreditation requirements.~~

~~(6) **Signatory requirement.** All applications, reports, or information submitted to the DEQ shall be signed by the applicant.~~

~~(7) **Consent to conditions.** Commencing analytical activities as an accredited laboratory under DEQ accreditation shall constitute consent to all conditions of accreditation.~~

~~(8) **Transfer of accreditation.** Accreditation is not transferable. An accredited laboratory may apply to amend ownership or change names, provided that facilities, equipment, personnel and all other conditions of accreditation remain unchanged.~~

~~(9) **Duty to apply.** To maintain its accredited status, the Laboratory shall make timely application for annual renewal of accreditation.~~

~~(10) **Severability.** The provisions of accreditation are severable, and if any of its provisions or the application of its provisions are held invalid, the application of such provisions to other circumstances and the remaining provisions of the accreditation shall not be affected thereby.~~

252:303-3-22. Amendments to accreditations [REVOKED]

~~(a) **Changes to be reported.** Changes in laboratory name, ownership, form of ownership, location, and other changes, including personnel and/or equipment, which may significantly affect the performance of analyses for which the laboratory was originally accredited shall be reported in writing to the DEQ within 30 days of occurrence. If requested by owner, the DEQ may amend the accreditation to reflect reported changes.~~

~~(b) **Amendment fee.** An amendment fee shall be assessed in accordance with OAC 252:303-1-9.~~

~~(c) **Cause.** The DEQ may amend an accreditation for cause, with notice to the affected accredited laboratory and opportunity for hearing.~~

252:303-3-23. Self-reporting [REVOKED]

~~(a) An accredited laboratory shall promptly submit correct facts or information to the DEQ and/or to the client when:~~

~~(1) it becomes aware that it failed to submit a material fact or submitted incorrect information in an application or a report to the DEQ or to a client for submission to the DEQ; or~~

~~(2) the DEQ becomes aware of same and notifies the laboratory.~~

~~(b) Failure to make a prompt submission may result in an enforcement action.~~

PART 5. GROUNDS TO SUSPEND OR REVOKE [REVOKED]

252:303-3-31. Grounds to take enforcement action [REVOKED]

~~(a) In addition to the grounds listed in 27A O.S. §2-3-501 *et seq*., § 2-4-305(A) and OAC 252:4-7-15, the DEQ may suspend, revoke or refuse to renew in part or in whole the accreditation of any laboratory for the following grounds:~~

~~(1) consistent and significant errors in analyses, erroneous reporting or evidence of professional or technical incompetence;~~

~~(2) misrepresentation to others regarding the type and conditions of DEQ accreditation and the reliance of others on such misrepresentation;~~

~~(3) failure to perform any of the following:~~

~~(A) to correct deficiencies, comply with a corrective action plan, or take other action required by the DEQ pursuant to these rules;~~

~~(B) to participate or produce acceptable results in required proficiency testing;~~

~~(C) to cooperate with or allow on-site laboratory evaluations, inspections, or access to records; or~~

~~(D) failure to notify or submit reports to the DEQ as required by this Chapter.~~

~~(4) submission of a proficiency testing sample to another laboratory for analysis, and reporting data received as its own;~~

~~(5) collaboration with other laboratories on results before proficiency testing sample results are submitted to the required agency;~~

~~(6) allowing persons other than qualified laboratory employees to perform and report results of accredited analytes;~~

~~(7) any other violation, action or inaction presenting good cause for such action;~~

~~(8) when the PAB suspends a laboratory; or~~

~~(9) when conditions arise under 252:303-5-5 and/or 5-6.~~

~~(b) The DEQ reserves the right to enforce against a secondary accredited laboratory if the PAB does not take action or during the PAB's enforcement action.~~

~~(c) All information included and documented in a corrective action report is public information and is subject to the Oklahoma Open Records Act, 51 Oklahoma Statutes, Section 24A *et seq*, excluding proprietary data, confidential business information and classified national security information.~~

~~(d) Laboratory accreditation will not be suspended or revoked without the right to due process as addressed in OAC 252: 4, Rules of Practice and Procedure.~~

252:303-3-32. Notice [REVOKED]

~~The DEQ may require an accredited laboratory to give written notice to its clients of the suspension or revocation of any part of its accreditation.~~

252:303-3-33. Individual proceedings [REVOKED]

~~Proceedings for accreditation revocation, suspension or reinstatement shall be conducted in accordance with 27A O.S. § 2-3-501 *et seq.*, and OAC 252:4, DEQ Rules of Practice and Procedure.~~

SUBCHAPTER 5. GENERAL OPERATIONS [REVOKED]

252:303-5-1. Posting of accreditation [REVOKED]

~~Each accredited participant in the program shall maintain on file the list of analytes for which it is accredited and shall provide a copy of the list upon request.~~

252:303-5-2. Facilities [REVOKED]

~~(a) A laboratory located in multiple buildings shall be treated as one accreditation if the buildings are within one(1) mile of each other and under the same direct management.~~

~~(b) Mobile laboratories located within Oklahoma and that analyze samples exclusively within the State are not required to obtain separate accreditation. Mobile laboratories that are not individually accredited by the PAB do not need separate accreditation to operate within the State.~~

252:303-5-3. On-site inspections [REVOKED]

~~(a) **Inspections.** Inspections may be unannounced.~~

~~(b) **On-site requirements.** During an inspection the DEQ may require on-site analyses of proficiency test samples by laboratory personnel. Laboratories shall make all employees available for interviews during on-site inspections.~~

~~(c) **Corrective action report.** Following the inspection the DEQ will provide the laboratory with a copy of the assessment report within 30 days. The laboratory will be afforded 30 days from the date of receipt in which to develop a Corrective Action Report (CAR) and 90 days in which to correct any listed deficiencies unless extended by written agreement of the parties or unless the laboratory is under an administrative order.~~

~~(d) **Subcontracting inspections.** The laboratory shall have the right to exclude a third party assessor if there is a conflict of interest.~~

~~(e) **Distribution of assessment reports.** The Subcontractor shall provide an initial assessment report to the DEQ. The DEQ shall compile, edit and submit the final report.~~

~~(f) **Public record.** All information included and documented in an assessment report is public information and is subject to the Oklahoma Open Records Act, excluding proprietary data, confidential business information and classified national security information.~~

252:303-5-4. Corrective action report [REVOKED]

~~(a) A corrective action report shall be submitted by the laboratory to the PAB in response to any assessment report received by the laboratory within 30 days after an on-site assessment. The report shall include the action that the laboratory shall implement to correct each deficiency and the time period required to accomplish the corrective action. Upon request of the primary accreditation body, documentation showing the implementation of corrective action(s) shall be forwarded to the primary accreditation body within the timeframe specified in the corrective action report.~~

~~(b) The laboratory may submit two corrective action reports within the time limits specified herein.~~

~~(c) If the corrective action report is not acceptable to the accreditation body after the second submittal, the laboratory's accreditation shall be revoked for all or any portion of its scope of accreditation for any or all of a field of accreditation, a method, or analyte within a field of accreditation.~~

~~(d) All information included and documented in a corrective action report is public information and is subject to the Oklahoma Open Records Act, excluding proprietary data, confidential business information and classified national security information.~~

~~(e) Laboratory accreditation will not be revoked without the right to due process as addressed in OAC 252: 4, Rules of Practice and Procedure.~~

252:303-5-5. Corrective action(s) [REVOKED]

~~If the laboratory fails to implement and maintain corrective actions as stated in its corrective action report(s),the laboratory's accreditation shall be revoked for all or any portion of~~

~~its scope of accreditation for any or all of a field of accreditation, a method, or analyte within a field of accreditation. Laboratory accreditation will not be revoked without the right to due process as addressed in OAC 252: 4, Rules of Practice and Procedure.~~

252:303-5-6. Recordkeeping and reporting [REVOKED]

~~(a) The laboratory shall keep the following records on file in its accredited facility:~~

~~(1) accreditation and the application on which it is based;~~

~~(2) copies of all records and documentation required to be kept by this Chapter;~~

~~(3) repair and maintenance records;~~

~~(4) reports filed with the DEQ or submitted to clients for filing with the DEQ;~~

~~(5) equipment changes, additions or malfunctions; and~~

~~(6) QA/QC plans and reports.~~

~~(b) Any data report given to a customer by an accredited laboratory shall identify:~~

~~(1) the parameters for which the laboratory is DEQ-accredited;~~

~~(2) the class of DEQ-issued accreditation of each analyte; and~~

~~(3) which analytes were subcontracted out for analysis and the subcontracting laboratory's DEQ-issued accreditation number for each of the subcontracted analytes.~~

SUBCHAPTER 7. MANAGEMENT AND TECHNICAL REQUIREMENTS [REVOKED]

252:303-7-1. Incorporation by Reference [REVOKED]

~~(a) **Quality systems general requirements.** TNI Environmental Laboratory Sector, Vol. 1, Management and Technical Requirements for Laboratories Performing Environmental Analysis, Module 2: Quality Systems General Requirements 2009 is hereby incorporated by reference.~~

~~(b) **EPA Methodology.** The following EPA methods, as published in July 2010, are hereby incorporated by reference:~~

~~(1) "Guidelines Establishing Test Procedures for the Analysis of Pollutants",40 CFR Part 136.~~

~~(2) "Test Methods for Evaluating Solid Waste, Laboratory Manual Physical/Chemical Methods," SW-846 Manual. See further SW-846 ON-LINE.; and~~

~~(3) "Analytical Methods for Biological Pollutants in Wastewater and Sewage Sludge", 40 CFR Part 503~~

252:303-7-2. DEQ approved methodologies [REVOKED]

~~The following methods are specifically approved by the DEQ:~~

~~(1) TNRCC Method 1005 Total Petroleum Hydrocarbons (>nC6 to nC35) of June 1, 2001;~~

~~(2) Oklahoma GRO 8020/8015(Modified) of September 2, 1996;~~

~~(3) Oklahoma DRO 8000/8100(Modified) of October 22, 1997;~~

~~(4) ASTM mussels of 2006; and~~

~~(5) On a case by case basis as approved by DEQ~~

SUBCHAPTER 9. SECONDARY ACCREDITATION [REVOKED]

252:303-9-1. Reciprocity [REVOKED]

~~(a) The DEQ shall grant accreditation to laboratories accredited by any other TNI recognized primary accreditation body in accordance with 27A O.S. Section 2-4-306 on a laboratory by laboratory basis. No additional proficiency testing, quality assurance, or on-site assessment requirements for the fields of testing for which the laboratory holds primary TNI accreditation shall be required.~~

~~(b) When granting reciprocal accreditation to a laboratory, the DEQ shall grant reciprocal accreditation~~

~~(1) for only the fields of testing, methods and analytes for which the laboratory holds current primary TNI accreditation;~~

~~(2) and issue certificates to the applicant laboratory within 30 calendar days of receipt of the laboratory's application unless potential nonconformance with TNI standards is noted.~~

252:303-9-2. Potential nonconformance when DEQ is secondary accreditation body [REVOKED]

~~(a) If the DEQ notes any potential nonconformance with the TNI standards by a laboratory during the initial application process for reciprocal accreditation, or for a laboratory that already has been granted TNI accreditation through reciprocity, the DEQ shall immediately notify, in writing, the applicable TNI recognized primary accreditation body.~~

~~(b) The laboratory is to be notified only in situations where no administrative or judicial prosecution is contemplated.~~

~~(c) The notification must cite the applicable sections within the TNI standards for which nonconformance by the laboratory has been noted.~~

~~(d) If the alleged nonconformance is noted during the initial application process for reciprocal TNI accreditation, final action on the application shall not be taken until the alleged nonconformance issue has been resolved.~~

~~(e) If the alleged nonconformance is noted after the reciprocal TNI accreditation has been granted, the laboratory shall maintain its current TNI accreditation status until the alleged nonconformance issue has been resolved.~~

252:303-9-3. Potential nonconformance when DEQ is primary accreditation body [REVOKED]

~~(a) When the DEQ receives notification of potential nonconformance from a secondary accreditation body, it shall review and investigate the alleged nonconformance and take appropriate action on the laboratory, including the addition of any change of accreditation status in the National Environmental Laboratory Accreditation Database, in accordance with 252:303-3-31.~~

~~(b) Within 20 days of the notification of potential nonconformance from a secondary accreditation body, the DEQ shall respond in writing with a copy to the secondary accreditation body, providing the following information:~~

~~(1) an initial report of the findings;~~

~~(2) a description of the actions to be taken; and~~

~~(3) a schedule for implementation of further action on the alleged nonconformance, if necessary.~~

252:303-9-4. Dispute resolution between primary and secondary accreditation bodies [REVOKED]

~~If, in the opinion of the secondary accreditation body, the primary accreditation body does not take timely and appropriate action on the complaint, the secondary accreditation body may notify the TNI Accreditation Council of the dispute between the two accreditation bodies regarding proper disposition of the complaint.~~

[OAR Docket #15-551; filed 6-15-15]

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

[OAR Docket #15-552]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Chapter 307. TNI Laboratory Accreditation [NEW]
AUTHORITY:
Environmental Quality Board powers and duties, 27A O.S. § 2-2-101; the Water Quality Management Advisory Council powers and duties, 27A O.S. § 2-2-201; and the Environmental Quality Code, Laboratory Certification Services, 27A O.S. § 2-4-301, *et seq*.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
May 9, 2014
COMMENT PERIOD:
June 2, 2014 - July 2, 2014
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Before the Water Quality Management Advisory Council on July 8, 2014.
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ADOPTION:
November 13, 2014
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November 17, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 8, 2015
FINAL ADOPTION:
June 8, 2015
EFFECTIVE:
September 15, 2015
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
Incorporated Standards:
TNI Laboratory Sector, Volume 1, "Management and Technical Requirements for Laboratories Performing Environmental Analysis. Modules 1, 2, 3, 4, 5, 6 and 7 as adopted September 8, 2009, except as provided in Volume 1, Module 1 of the TNI Standard, subsections 4.1.3 and 4.2.1a) are not incorporated by reference;

Guidelines Establishing Test Procedures for the Analysis of Pollutants, 40 CFR Part 136;

Test Methods for Evaluating Solid Waste, Laboratory Manual Physical/Chemical Methods, SW-846 Manual, Third Edition as amended by Final Updates I, II, IIA, IIB, III, IIIA, IIIB, IVA, IVB and V;

Methodologies set forth in the National Primary Drinking Water Regulations," 40 CFR Part 141; and

Manual for the Certification of Laboratories Analyzing Drinking Water, Fifth Edition and Supplement 1 (EPA 815-5-05-004, January 2005 and EPA 815-F-08-006, June 2008).
Incorporating Rules:
252:307-1-4
Availability:
8:00 a.m. to 4:30 p.m., Monday through Friday at Oklahoma Department of Environmental Quality, 707 North Robinson, Oklahoma City, OK 73102-6010, 405-702-1000.
ANALYSIS:
The NELAC Institute (TNI) is a 501(c)(3) non-profit organization whose mission is to foster the generation of environmental data of known and documented quality through an open, inclusive, and transparent process that is responsive to the needs of the community. The organization is managed by a Board of Directors and is governed by organizational bylaws. The Laboratory Accreditation Program is applying to TNI for authorization to become an Accreditation Body. Therefore the state rules must be consistent with TNI.

The DEQ proposes to adopt a new Chapter 307, TNI Laboratory Accreditation, to be consistent with TNI standards. The rules proposed in this Chapter provide standards for voluntary accreditation of privately and publicly owned laboratories to perform analyses of water and wastewater, solid and hazardous waste, soil, sludge and petroleum hydrocarbons consistent with The NELAC Institute (TNI) standards. TNI standards are being incorporated by reference.

This rule adoption process is progressing in tandem with the revocation of Chapter 303. Chapter 303 was not implemented and is to be replaced with Chapter 307 due to inconsistency with TNI Standards language and difficulty in enforcing the rule as previously written.
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2015:

SUBCHAPTER 1. INTRODUCTION

252:307-1-1. Purpose

(a) **Intent.** The purpose of this Chapter is to foster the generation of environmental data of known and documented quality through a laboratory accreditation program administered by the Department of Environmental Quality. This Chapter sets

standards for accreditation consistent with standards of The NELAC Institute (TNI).

(b) **Authority.** This Chapter was promulgated and adopted pursuant to the Oklahoma Environmental Quality Code (Code), 27A O.S. § 2-4-101 *et seq.*, and shall apply to laboratories accredited or applying to be accredited by DEQ.

(c) **Implementation Date.** The implementation date of this Chapter is January 1, 2016.

252:307-1-2. Scope

(a) **Voluntary program.** These rules apply to any environmental laboratory that seeks accreditation.

(b) **Requirements of other authorities.** Accreditation as described in these rules may be required of environmental laboratories reporting drinking water analyses to DEQ. (See National Primary Drinking Water Regulations at 40 CFR 141.28; Oklahoma Pollutant Discharge Elimination System Standards (OPDES) in OAC 252:606; and Public Water Supply Operations in OAC 252:631). Accreditation may also be imposed as a requirement of other applicable environmental statutes or rules, or imposed as a contract requirement by a laboratory customer.

252:307-1-3. Definitions

In addition to the definitions contained in Title 27A of the Oklahoma Statutes, OAC 252:4 (Department of Environmental Quality Rules of Practice and Procedure) and the TNI Standard, the following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise. Any technical term not defined shall be defined by its generally accepted scientific meaning or its standard dictionary meaning.

"Acceptable results", as defined in 27A O.S. § 2-4-101, means a result within limits determined on the basis of statistical procedures as prescribed by DEQ.

"Accreditation" or "accredited" means the process by which the DEQ evaluates an environmental laboratory's quality systems, staff, facilities, equipment, test methods, records and reports against the requirements of this Chapter. Laboratories determined to meet the qualifications and standards of this Chapter are thereby accredited. The term certification, as used in 27A O.S. §2-4-101, is synonymous with the term accreditation.

"Accreditation Body" means a governmental agency that holds a current Certificate of Recognition from TNI to administer a laboratory accreditation program.

"Analyte" means the component, compound, element or isotope to be identified or quantified using a test or analysis.

"Applicant" means the owner of a laboratory, or a representative authorized by the owner to act on the owner's behalf, seeking accreditation from the DEQ.

"Applicant laboratory" means the laboratory and its owner or authorized representative for which an application for accreditation has been filed with the DEQ.

"Approved method" means an analytical test method which has been required by law or is recognized by the DEQ as acceptable for a specific usage.

"Assessment" means the evaluation process used to measure or establish the performance, effectiveness, and conformance of a laboratory to the standards and requirements of this Chapter. The term "Evaluation" as used in 27A O.S. § 2-4-101, is synonymous with the term "Assessment".

"Basic environmental laboratory" means a laboratory that is limited to the following analytes: five day biochemical oxygen demand, carbonaceous biochemical oxygen demand, chemical oxygen demand, total organic carbon (TOC), total Kjeldahl nitrogen (TKN), nitrate-nitrite nitrogen, organic nitrogen, ammonia nitrogen, total dissolved solids (filterable residue), total suspended solids (non-filterable residue), volatile residue, total phosphorous, orthophosphate phosphorus (reactive phosphorus), chloride, fluoride, oil and grease, sulfate, pH, specific conductance, dissolved oxygen, turbidity, total residual chlorine, hardness, alkalinity, color, fecal coliform, total coliform, cyanide, phenolics, copper, zinc, iron, sulfide, chromium, and hexavalent chromium.

"Blind audit" means a process whereby the DEQ or any other designated agent submits proficiency testing samples to an accredited laboratory in a manner such that the laboratory is not aware of the process.

"Category" means a set of Fields of Accreditation subject to a single fee.

"Certificate" or **"Certificate of Accreditation"** is a document issued by DEQ acknowledging that an environmental laboratory has met standards for accreditation, and identifying those Fields of Accreditation for which the laboratory is accredited.

"Corrective Action Plan" or "Corrective Action Report" is a written plan of action, including a schedule for implementation, to correct deficiencies or findings identified in the DEQ or DEQ-approved agent's assessment report, including a time line for implementation; or to eliminate the causes of an existing nonconformity, defect or other undesirable situation in order to prevent its recurrence.

"DEQ" means the Oklahoma Department of Environmental Quality. For purposes of certifications issued and enforcement matters arising prior to July 1, 1993, "DEQ" also means predecessor agencies of the DEQ which had jurisdiction over environmental water quality laboratories on June 30, 1993.

"Field of Accreditation (FoA)" means those category, matrix, technology/method, and analyte combinations for which DEQ offers accreditation.

"Finding" means a conclusion of noncompliance of the evaluation process, referenced to the TNI Standard and supported by objective evidence.

"Initial accreditation" means a first-time accreditation granted to a laboratory not previously accredited by the DEQ.

"Interim accreditation" means an out-of-time temporary accreditation status issued to a DEQ accredited laboratory for Fields of Accreditation not currently accredited by the DEQ, or where appropriate, temporary accreditation status for a laboratory that has met all accreditation criteria except for a pending on-site assessment which has been delayed for reasons beyond the control of the laboratory.

"Laboratory", as defined in 27A O.S. § 2-4-101, means a facility that performs analyses to determine the chemical, physical or biological properties of air, water, solid waste, hazardous waste, wastewater or soil or subsoil materials or performs any other analyses related to environmental quality evaluations. "Laboratory" includes mobile laboratories.

"Laboratory waste" means by-products of the analytical process, residues of samples analyzed, discarded reagents or standards and any materials contaminated by any of these.

"Matrix" means the substrate of a test sample, e.g., drinking water, wastewater, other aqueous, or solid.

"Mobile laboratory" means a mobile facility that performs analyses in a self-contained environment with professional analytical instrumentation, excluding field testing of those analytes that require immediate measurement on site (conductivity, residual chlorine, pH, dissolved oxygen, temperature).

"Owner" means the sole proprietor of an individually owned laboratory, the controlling or managing partner of a laboratory held by a partnership, the major stockholders of a corporate owned laboratory, or a municipality or other local government entity which owns or operates a laboratory.

"Parameter" is synonymous with "analyte".

"Primary accreditation" is authorization issued to a laboratory following an assessment of the laboratory's total quality system, on-site assessment, and proficiency testing for fields of accreditation.

"Primary accreditation body" (Primary AB) means the accreditation body responsible for assessing a laboratory's total quality system, on-site assessment, and proficiency testing (PT) performance tracking for fields of accreditation.

"Proficiency testing (PT) sample" means a sample submitted to a laboratory by the DEQ or other designated agent for the purpose of assessing the ability of the laboratory to correctly analyze samples using an approved method.

"Program" means the DEQ laboratory accreditation program.

"Quality manual" means a document stating the management policies, objectives, principles, organizational structure and authority, responsibilities, accountability, and implementation of the laboratory to ensure the quality of its product and the utility of its product to its users. The Quality Manual will ensure the generation of data that are scientifically valid, defensible and of known and acceptable limits of precision and accuracy.

"Quality system" means a structured and documented management system describing the policies, objective, principles, organizational authority, responsibilities, accountability, and implementation plan of a laboratory for ensuring quality in its work processes, products and services. The quality system provides the framework for planning, implementing, and assessing work performed by the laboratory and for carrying out required quality assurance and quality control activities.

"Secondary accreditation" is authorization issued to a laboratory based on recognition and review of an existing primary accreditation for the same fields of accreditation.

"Secondary accreditation body" (Secondary AB) means an accreditation body that grants laboratory accreditation for a field of accreditation based on recognition of accreditation from a Primary Accreditation Body for the same fields of accreditation.

"Standard operating procedures" (SOPs) means a written document approved by a laboratory director that details the method for an operation, analysis, or action, with thoroughly prescribed techniques and steps. SOPs include the methods for performing certain routine or repetitive tasks.

"Synthetic organic chemicals" (SOCs) are man-made organic chemicals that are less volatile than volatile organic compounds. SOCs are used as pesticides, defoliants, fuel additives and as ingredients for other organic compounds.

"The NELAC Institute" (TNI) means an organization of federal and state agencies whose purpose is to foster the generation of environmental data of known and documented quality through an open, inclusive, and transparent process that is responsive to the needs of the environmental laboratory community. The TNI Consensus Standards Development Program (CSDP) establishes compliance standards that reflect the best professional practices in the environmental laboratory industry. The TNI National Environmental Laboratories Accreditation Program (NELAP) implements TNI's consensus standards through state agencies recognized by TNI as Accreditation Bodies. DEQ is the TNI Accreditation Body in the State of Oklahoma.

"TNI Standard" means the performance standard for analytical testing of environmental samples and the laboratory accreditation process adopted by TNI, current to the date incorporated by reference in this Chapter.

252:307-1-4. Incorporation by reference

(a) **TNI Standard.** Except as provided in subsection (c), Laboratories accredited under this Chapter shall meet the requirements of the TNI Standard for the Environmental Laboratory Sector, Volume 1, "Management and Technical Requirements for Laboratories Performing Environmental Analysis." Modules 1,2,3,4,5,6 and 7 as adopted September 8, 2009, which are hereby incorporated by reference.

(b) **EPA methodology.** Environmental analysis for compliance with the Federal Safe Drinking Water Act, Federal Clean Water Act and Federal Resource Conservation and Recovery Act require conformance with applicable EPA approved methodology. If EPA has approved a test procedure for analysis of a specific analyte, the laboratory must use an approved test procedure. The following EPA methods, as published in July 2014, are hereby incorporated by reference:

(1) "Guidelines Establishing Test Procedures for the Analysis of Pollutants," 40 CFR Part 136;

(2) "Test Methods for Evaluating Solid Waste, Laboratory Manual Physical/Chemical Methods," SW-846 Manual, Third Edition as amended by Final Updates I, II, IIA, IIB, III, IIIA, IIIB, IVA, IVB and V. See further SW-846-ON-LINE;

(3) "Methodologies set forth in the National Primary Drinking Water Regulations," 40 CFR Part 141; and

(4) "Manual for the Certification of Laboratories Analyzing Drinking Water," Fifth Edition and Supplement 1 (EPA 815-5-05-004, January 2005 and EPA 815-F-08-006, June 2008).

(c) **Excluded provisions.** In Volume 1, Module 1 of the TNI Standard, subsections 4.1.3 and 4.2.1a) are not incorporated by reference.

(d) **DEQ approved methodologies.** The following methods are specifically approved by the DEQ:

(1) TNRCC Method 1005 Total Petroleum Hydrocarbons (>nC6 to nC35) of June 1, 2001;

(2) Oklahoma GRO 8020/8015(Modified) of February 24, 1996;

(3) Oklahoma DRO 8000/8100(Modified) of October 22, 1997;

(4) ASTM mussels of 2006;

(5) ASTM E 1193-97 for whole effluent toxicity tests; and

(6) On a case by case basis as approved by DEQ.

(e) **Inconsistencies between test methods and rules.** In the event there are inconsistencies between the requirements of this Chapter and requirements of those provisions incorporated by reference, the laboratory must meet all applicable requirements. Laboratories are encouraged to consult with DEQ when in doubt about the proper or applicable test method.

252:307-1-5. Accreditation classes and fields of accreditation

(a) **Classes.** Laboratories may be accredited in Drinking Water and/or as a General Environmental Laboratory.

(b) **Drinking water laboratory.** A drinking water laboratory may be accredited for Fields of Accreditation in the following categories: metals, general chemistry, microbiology, asbestos, synthetic organic chemicals (SOCs), volatile organic compounds (VOCs) and/or radionuclides.

(c) **General environmental laboratory.** A laboratory may be accredited for Fields of Accreditation in the following categories: metals, nutrients, oxygen demands, semi-volatile organic compounds (SVOCs), general chemistry I and/or II, microbiology, asbestos, synthetic organic chemicals (SOCs), volatile organic compounds (VOCs), radionuclides, whole effluent toxicity (WET) testing, hazardous waste characterization, petroleum hydrocarbons, perchlorate, and/or basic environmental laboratory.

252:307-1-6. Annual accreditation

The term of accreditation is annual, running from September 1 to August 31 the following year. Notwithstanding, an applicant laboratory may apply at any time for initial, interim or renewal accreditation. A laboratory applying for interim accreditation shall meet the same requirements as a laboratory applying for initial accreditation.

252:307-1-7. Annual fees

(a) **Applicable fees.** The following fees apply:

(1)	Initial accreditation	$1,183.00
(2)	Interim accreditation	696.00
(3)	Renewal fee	35.31
(4)	Renewal late fee	347.86
(5)	Accreditation amendment	69.57
(6)	Fee for 1 category	488.05
(7)	Fee for 2 categories	976.09
(8)	Fee for 3 categories	1,464.14
(9)	Fee for 4 categories	1,952.18
(10)	Fee for 5 or more categories	2,440.23

(b) **Calculation of fees.** In addition to the application fee required for initial, renewal and interim accreditation, a laboratory must submit the applicable category fee. Fees for accreditation amendment, as described in OAC 252:307-5-2, consist of the accreditation amendment fee.

(c) **Annual fee adjustment.** To assist in meeting rising costs to the DEQ of the environmental services and regulatory programs associated with the laboratory services program, the fees set out in this Section shall be automatically adjusted on July 1 every year after 2008 to correspond to the percentage, if any, by which the Consumer Price Index (CPI) for the most recent calendar year exceeds the CPI for the previous calendar year. The DEQ may round the adjusted fees up to the nearest dollar. The DEQ may waive collection of an automatic increase in a given year if it determines other revenues, including appropriated state general revenue funds, have increased sufficiently to make the funds generated by the automatic adjustment unnecessary in that year. A waiver does not affect future automatic adjustments. Current laboratory accreditation fees are available on the DEQ website.

(1) Any automatic fee adjustment under this subsection may be averted or eliminated, or the adjustment percentage may be modified, by rule promulgated pursuant to the Oklahoma Administrative Procedures Act. The rulemaking process may be initiated in any manner provided by law, including a petition for rulemaking pursuant to 75 O.S. § 305 and OAC 252:4-5-3 by any person affected by the automatic fee adjustment.

(2) If the United States Department of Labor ceases to publish the CPI or revises the methodology or base years, no further automatic fee adjustments shall occur until a new automatic fee adjustment rule is promulgated pursuant to the Oklahoma Administrative Procedures Act.

(3) For purposes of this subsection, "Consumer Price Index" or "CPI" means the Consumer Price Index - All Urban Consumers (U.S. All Items, Current Series, 1982-1984=100, CUUR0000SA0) published by the United States Department of Labor. The CPI for a calendar year is the figure denoted by the Department of Labor as the "Annual" index figure for that calendar year.

SUBCHAPTER 3. LABORATORY ACCREDITATION PROCESS

252:307-3-1. Application requirements

(a) **General.** A laboratory shall submit one copy of the application, whether for primary accreditation or secondary accreditation. Application forms are available on the DEQ website. Applications shall be accurate and complete, signed, and

submitted to the DEQ electronically or by regular mail, with all required attachments.

(b) **TNI Standard.** Laboratories shall obtain a copy of the TNI Standard for use in their accredited laboratory programs. Standards may be obtained from The NELAC Institute, ordered on-line at http://www.nelac-institute.org/standards.php.

(c) **Signature and verification.** An application shall be signed by the sole proprietor of an individually owned laboratory, the controlling or managing partner or partners of a laboratory held by a partnership, the authorized agent of a corporate owned laboratory, or the principal executive officer or ranking elected official of a municipality or other local government entity which owns or operates the applicant laboratory. The signer shall verify in the application that it was prepared under his direction or supervision and that the information it contains is, to the best of his knowledge, true, accurate and complete.

(d) **Certification of compliance.** A "Certification of Compliance" statement must accompany the application for laboratory accreditation in accordance with the 2009 TNI Standard. The statement must be signed and dated by both the laboratory management and the quality assurance officer, or other designated person, for that laboratory. The certification statement must contain at least the following statements: "The applicant understands and acknowledges that the laboratory is required to be continually in compliance with the Oklahoma Department of Environmental Quality standards and is subject to the enforcement and penalty provisions of that accreditation body. I hereby certify that I am authorized to sign this application on behalf of the applicant/owner and that there are no misrepresentations in my answer to the questions on this application."

(e) **Application fees.** Fees shall be submitted to the DEQ at the same time that applications are submitted. Applications will not be reviewed until fees are received.

(f) **Environmental permit.**

(1) All laboratory accreditation applicants are subject to the tiered application procedural requirements of the Oklahoma Uniform Environmental Permitting Act, 27A O.S. § 2-14-101 *et seq.*, and Subchapter 7 of OAC 252:4 Rules of Practice and Procedure. Laboratory Accreditation is a Tier 1 action.

(2) Applicant laboratories must certify by affidavit that they own the real property where the laboratory is located, have a current lease or easement for the purpose, or have provided legal notice to the landowner. The landowner affidavits must be filed with the initial application, and thereafter any time there is a change in location or ownership. Landowner affidavit forms are available on the DEQ website.

(g) **Primary accreditation.** Applicants for primary accreditation shall submit the application and required attachments which shall address all information requirements in 252:307-3-2 and 307-3-3.

(h) **Secondary accreditation.** Applicants for secondary accreditation shall submit the application plus the Primary AB's general scope of accreditation in a format required by DEQ. Applicants for secondary accreditation need not submit information required in 252:307-3-3.

(i) **Processing.** Applications for primary and secondary accreditation shall be processed in the chronological order in which they are received.

252:307-3-2. Contact information

In addition to other information required by this Chapter, an application shall contain the following information:

(1) The name, mailing address, street address, telephone number, e-mail address and telefax number (if any) of the applicant.

(2) The signature, typewritten name, address, telephone number and telefax number (if any) of the owner or owner's authorized representative.

(3) The name, mailing address, street address, telephone and telefax number (if any) of the applicant laboratory's authorized manager.

(4) The location(s) (address or legal description) of the laboratory, including county and driving directions and latitude/longitude.

(5) Identification of the accreditation class and categories, analytes and/or methods sought.

252:307-3-3. Operational information

The application for primary accreditation shall include the following:

(1) A report of an onsite assessment conducted by the DEQ or a DEQ approved assessor within the eighteen (18) months prior to the date of filing or, for in-state laboratories only, a letter requesting the DEQ to conduct an on-site assessment. The assessment report shall verify data submitted in an application, list any deficiencies and be signed by the DEQ or DEQ approved assessor.

(2) A listing of equipment to be used for sample analysis, storage and reporting.

(3) Standard Operating Procedures (SOPs) for every analyte or method performed by the laboratory. An SOP may be a copy of a published or referenced method or may be written by the laboratory. Each SOP shall include or reference the following topics, as applicable:

(A) Identification of the method;
(B) Applicable matrix or matrices;
(C) Limits of detection and quantitation;
(D) Scope and application, including parameters to be analyzed;
(E) Summary of the method;
(F) Definitions;
(G) Interferences;
(H) Safety;
(I) Equipment and supplies;
(J) Reagents and standards;
(K) Sample collection, preservation, shipment and storage;
(L) Quality control;
(M) Calibration and standardization;
(N) Procedure;
(O) Data analysis and calculations;
(P) Method performance;

(Q) Pollution prevention;
(R) Data assessment and acceptance criteria for quality control measures;
(S) Corrective actions for out-of-control data;
(T) Contingencies for handling out-of-control or unacceptable data;
(U) Waste management;
(V) References; and
(W) Any tables, diagrams, flowcharts and validation data.

(4) A written quality manual which shall meet all requirements, for inclusion or reference, of the TNI Standard.

(5) A statement of personnel qualifications showing that laboratory employees meet the applicable personnel requirements of the TNI Standard. Educational requirements will be considered only if awarded by an accredited institution of higher education.

(6) Results of laboratory's two most recent proficiency testing rounds, at least 15 calendar days apart. All PT laboratory records shall be made readily available prior to and during on-site assessments of the laboratory.

(7) If deficiencies are listed in an assessment report, the applicant shall submit a corrective action plan which specifies deadlines for implementation and completion of the plan. The DEQ may establish conditions, including compliance schedules, for the applicant's corrective action plan.

252:307-3-4. Multiple site and mobile facility accreditation

(a) A laboratory with multiple sites shall be treated as one accreditation if the sites are within one (1) mile of each other and under the same direct management. Laboratory sites include the laboratory's permanent facilities, sites away from its permanent facility, and associated temporary or mobile facilities.

(b) Mobile laboratories that are affiliated with an out-of-state laboratory need to be accredited by DEQ to operate within the State.

252:307-3-5. Reasons to deny an initial or renewal application

(a) An application for accreditation shall be denied in the following circumstances:

(1) Failure to submit a completed application, including SOPs and quality manual;

(2) Failure to pay required fees;

(3) Failure of laboratory staff to meet the personnel qualifications of education, training and experience as required by the TNI standards;

(4) Failure to successfully analyze and report proficiency testing samples as required by the TNI standards and requirements of this Chapter at Part 1 of Subchapter 9;

(5) Failure to respond to an assessment report from the on-site assessment with a corrective action report within the 30 calendar days after receipt of the assessment report;

(6) Failure to implement the corrective actions detailed in the corrective action report within the specified time frame as approved by the primary accreditation body;

(7) Failure to implement a quality system as defined in the TNI standards;

(8) Failure to pass required on-site assessment(s) as specified in the TNI standards;

(9) Misrepresentation of any fact pertinent to receiving or maintaining accreditation; or

(10) Denial of entry during normal business hours for an on-site assessment as required by the TNI standards.

(b) If the laboratory is not successful in correcting the deficiencies as required by TNI standards, the laboratory must wait six months before again reapplying for accreditation.

(c) Laboratory accreditation will not be denied without the right to due process as addressed in OAC 252:4, Rules of Practice and Procedure.

252:307-3-6. Renewal and expiration

(a) **Annual renewal required.** A laboratory must timely submit an application for renewal each year, or its accreditation will expire on August 31.

(b) **Laboratory responsibility.** Each laboratory is responsible for renewing its accreditation by the annual renewal date. Failure to receive a renewal notification and invoice does not exempt laboratories from meeting the renewal deadline.

(c) **DEQ invoice date.** By April 15 of each year, the DEQ mails invoices to each accredited laboratory.

(d) **Deadline.** All applicable fees shall be submitted to the DEQ by 4:30 p.m. on or before June 15 or postmarked on or before that date. Any renewal application which is not received electronically by the DEQ on or before June 15 shall be considered only if the electronic application form, renewal fee and a late fee are submitted on or before July 15. Applications and fees received or postmarked after July 15 will be returned and accreditation shall not be renewed.

(e) **PT provider.** Laboratories shall ensure that the PT provider has submitted all pertinent PT reports to the DEQ electronically or postmarked on or before July 15 of each year. PTs received later than July 15 will not be considered for accreditation renewal.

(f) **Specified dates.** If any date specified in this section falls on a weekend or holiday, the date of the following working day shall be the effective date.

(g) **Failure to renew.** To become accredited again, a laboratory that failed to renew its accreditation in a timely manner must apply for initial accreditation as a new laboratory.

SUBCHAPTER 5. CONDITIONS OF ACCREDITATION

252:307-5-1. Conditions applicable to all accreditations

The following conditions shall apply to all existing accreditations and shall be incorporated expressly or by reference into all accreditations issued or renewed after the effective date of this Chapter.

(1) **Proper operation and maintenance.** The laboratory shall at all times properly operate and maintain all facilities and equipment installed or used by the laboratory to achieve compliance with the laboratory accreditation requirements of 27A O.S. § 2-4-101 *et seq.*, rules for laboratory accreditation at OAC 252:307, and the provisions and conditions of its Accreditation. Proper operation and maintenance includes effective performance of operations and adequate funding, operator staffing and training, and the provision of appropriate sample-handling equipment. All operational practices and procedures used shall conform to the best possible public health and safety practices.

(2) **Duty to mitigate.** The laboratory shall take all reasonable steps to minimize or correct any endangerment of human health resulting from noncompliance with this Accreditation and to minimize or correct any adverse impact on the environment arising from its analytical activities.

(3) **Duty to provide information.** The laboratory shall furnish to the DEQ, within a time specified, any information which the DEQ may request to determine:

(A) whether cause exists for amending, suspending, or revoking Accreditation;

(B) compliance with Accreditation; or

(C) whether an accreditation should be issued or renewed.

(4) **Reporting requirements.** The laboratory shall give advance notice to the DEQ as soon as possible of any planned physical alterations, additions to the accredited facility or planned changes in the accredited facility which may result in noncompliance with accreditation requirements.

(5) **Signatory requirement.** All applications, reports, or information submitted to the DEQ shall be signed by the applicant.

(6) **Consent to conditions.** Commencing analytical activities as an accredited laboratory under DEQ accreditation shall constitute consent to all conditions of accreditation.

(7) **Transfer of accreditation.** Accreditation is not transferable. An accredited laboratory may apply to amend its accreditation to reflect a change of ownership or name change, provided that facilities, equipment, personnel and all other conditions of accreditation remain unchanged.

(8) **Duty to apply.** To maintain its accredited status, the laboratory shall make timely application for annual renewal of accreditation.

(9) **Severability.** The provisions of accreditation are severable, and if any of its provisions or the application of its provisions are held invalid, the application of such provisions to other circumstances and the remaining provisions of the accreditation shall not be affected thereby.

(10) **Use of TNI logo.** The laboratory is allowed to use the TNI symbol on its reports or certificates issued within the scope of its accreditation. Misuse of the logo constitutes a failure to comply with accreditation requirements.

(11) **Withdrawal from TNI.** If a laboratory wishes to withdraw from this program, in total or in part, it must notify DEQ in writing.

252:307-5-2. Amendments to accreditations

(a) **Changes to be reported.** Changes in laboratory name, ownership, form of ownership, location, and other changes, including personnel, main policies, and/or equipment, which may significantly affect the performance of analyses for which the laboratory was originally accredited shall be reported in writing to the DEQ within 30 days of occurrence. If requested by owner, the DEQ may amend the accreditation to reflect reported changes.

(b) **Amendment fee.** An amendment fee shall be assessed in accordance with OAC 252:307-1-7.

(c) **Cause.** The DEQ may amend an accreditation for cause, with notice to the affected accredited laboratory and opportunity for hearing.

252:307-5-3. Self-reporting

(a) An accredited laboratory shall promptly submit correct facts or information to the DEQ and/or to the client when:

(1) it becomes aware that it failed to submit a material fact or submitted incorrect information in an application or a report to the DEQ or to a client for submission to the DEQ; or

(2) the DEQ becomes aware of same and notifies the laboratory.

(b) Failure to make a prompt submission may result in an enforcement action.

252:307-5-4. Failure to comply

(a) Any person or laboratory to whom this Chapter applies must comply with the requirements of this Chapter and the statutory requirements of 27A O.S. §2-3-501 *et seq.*, §2-4-305(A) and OAC 252:4-7-15. Failure to apply for or receive any part of an accreditation does not negate the requirement to meet any applicable requirement. Failure to comply may result in denial of applications, administrative and monetary penalties, suspension, reduction in scope, revocation or denial of renewal in part or in whole of the accreditation of any laboratory, and civil and/or criminal prosecution. Failure to comply includes:

(1) repeat or significant errors in analyses, erroneous reporting or evidence of professional or technical incompetence;

(2) misrepresentation to others regarding the type and conditions of DEQ accreditation and the potential or actual reliance of others on such misrepresentation;

(3) failure to perform any of the following:

(A) to correct deficiencies, comply with a corrective action plan, or take other action required by the DEQ pursuant to these rules;
(B) to participate in or produce acceptable results in required proficiency testing;
(C) to cooperate with or allow on-site laboratory evaluations, assessments, or access to record
(D) to notify or submit reports to the DEQ as required by this Chapter; or
(E) to maintain required records on file.
(4) submission of a proficiency testing sample to another laboratory for analysis, and reporting data received as its own;
(5) collaboration with another laboratory or any other individual on PT sample results prior to submittal to DEQ or prior to the closing date of the study;
(6) allowing persons other than qualified laboratory employees to perform and report results of accredited analytes;
(7) making any false statement or representation in or omitting material information from any required application, analysis, or report;
(8) when the primary accreditation body (Primary AB) suspends a laboratory; or
(9) failure to pay fees when due.
(b) The DEQ reserves the right to enforce against a secondary accredited laboratory if the Primary AB does not take action or during the Primary AB's enforcement action.
(c) As a part of any administrative order issued to a laboratory found to have unacceptable practices, the laboratory may be required, at its own cost, to hire a third party NELAP assessor to conduct an extraordinary assessment. The third party assessor must send the report to DEQ, and results or recommendations from the assessment may be incorporated as requirements of the administrative order.
(d) All information included and documented in an extraordinary assessment report is public information and is subject to the Oklahoma Open Records Act, 51 Oklahoma Statutes, Section 24A *et seq.*
(e) Laboratory accreditation will not be suspended or revoked without the right to due process as addressed in OAC 252:4, Rules of Practice and Procedure.

252:307-5-5. Notice

The DEQ may require an accredited laboratory to give written notice to its clients of the suspension or revocation of any part of its accreditation.

252:307-5-6. Individual proceedings

Proceedings for accreditation revocation, suspension or reinstatement shall be conducted in accordance with 27A O.S. §2-3-501 *et seq.*, and OAC 252:4, Rules of Practice and Procedure.

SUBCHAPTER 7. ONSITE ASSESSMENT REQUIREMENTS

252:307-7-1. Reasons for an onsite assessment

(a) Prior to granting primary accreditation to a laboratory, DEQ will perform an onsite assessment of the laboratory.
(b) Prior to granting accreditation for an additional field of accreditation to a laboratory, DEQ may perform an onsite assessment of the laboratory.
(c) DEQ may conduct onsite assessment of a laboratory to ensure compliance with the conditions of accreditation, this Chapter, or orders issued by DEQ.

252:307-7-2. Conduct of onsite assessments

(a) Onsite assessments may be unannounced.
(b) During an onsite assessment the DEQ, or DEQ's subcontractor, may require analyses of proficiency test samples by laboratory personnel. Laboratories shall make all employees available for interviews during onsite assessments.
(c) Following the onsite assessment, the DEQ will provide the laboratory with a written assessment report. The laboratory will be afforded 30 days from the date of receipt in which to develop a corrective action plan, and 90 days in which to correct any listed deficiencies unless extended by written agreement of the parties or unless the laboratory is under an administrative order.
(d) All information included and documented in an assessment report is public information and is subject to the Oklahoma Open Records Act.

252:307-7-3. Corrective action plan

(a) A corrective action plan shall detail the actions the laboratory will implement to correct each deficiency, and the time period required to accomplish the corrective action. Upon request of DEQ, documentation showing the implementation of corrective action(s) shall be forwarded to the primary accreditation body within the time frame specified in the corrective action plan.
(b) The laboratory may submit two corrective action plans within the time limits specified herein.
(c) If the corrective action plan is not acceptable to DEQ after the second submission, the laboratory's accreditation shall be revoked, as applicable, for all or any portion of its scope of accreditation for any or all of a field of accreditation, a method, or analyte within a field of accreditation.
(d) All information included and documented in a corrective action plan is public information and is subject to the Oklahoma Open Records Act.

252:307-7-4. Corrective action(s)

If the laboratory fails to implement and maintain corrective actions as stated in its corrective action plan(s), the laboratory's accreditation shall be revoked for all or any portion of its scope of accreditation for any or all of a field of accreditation, a method, or analyte within a field of accreditation.

SUBCHAPTER 9. MANAGEMENT AND TECHNICAL REQUIREMENTS

PART 1. PROFICIENCY TESTING

252:307-9-1. Applicability

The requirements of this Part shall apply to proficiency testing (PT) for drinking water and general environmental laboratories applying for accreditation or maintaining accreditation.

252:307-9-2. Participation required

Except as provided in 252:307-1-4(c), a laboratory must meet the PT requirements for initial and continued accreditation as specified in the TNI Standard for each field of proficiency testing for which it seeks accreditation or maintenance of accreditation. PT samples must be obtained from a TNI accredited PT provider.

252:307-9-3. Initial and continuing PT studies evaluation

A laboratory seeking to obtain or maintain accreditation shall successfully complete two initial or continuing PT studies for each requested field of proficiency testing within the most recent three rounds attempted. For a laboratory seeking to obtain accreditation, the most recent three rounds attempted shall have occurred within 18 months of the laboratory's application date. When a laboratory has been granted accreditation status, it shall continue to complete PT studies for each field of proficiency testing and maintain a history of at least two acceptable PT studies for each field of proficiency testing out of the most recent three. For initial accreditation, the laboratory must successfully analyze two sets of PT studies, the analyses to be performed at least 15 calendar days apart from the closing date of one study to the shipment date of another study for the same field of proficiency testing. For continuing accreditation, completion dates of successive proficiency rounds for a given field of proficiency testing shall be approximately six months apart. Failure to meet the semiannual schedule shall be regarded as a failed study on the last day of the seventh (7th) month. Initial or continuing PT studies must meet all applicable criteria described in this Chapter and the TNI Standard.

252:307-9-4. Cost responsibility

Laboratories shall bear the cost of any proficiency testing required by the DEQ.

252:307-9-5. DEQ PT samples

As part of a laboratory's proficiency testing, the DEQ may also submit blind audit samples to an accredited laboratory.

252:307-9-6. Restrictions on exchanging information

A laboratory shall not attempt to obtain the prepared value of any PT sample from its PT Provider or any other person or laboratory prior to the conclusion of the PT study.

252:307-9-7. Maintenance of PT records

The laboratory shall maintain copies of all written, printed and electronic records, including but not limited to bench sheets, raw data, instrument strip charts or printouts, data calculations, and data reports, resulting from the analysis of any PT sample for a minimum of five (5) years. The records shall include a copy of the PT study report forms used by the laboratory to record PT results.

252:307-9-8. Failure to perform

The DEQ shall not renew accreditation for a failed or omitted FoA or category for a laboratory which does not meet the requirements of this subchapter. Once accreditation for a FoA or category has been lost, the procedures for initial or interim accreditation shall apply.

252:307-9-9. Supplemental PT testing

A laboratory may elect to participate in PT testing more frequently than required by the semiannual schedule. Any additional tests performed by a laboratory must be submitted to DEQ in the same manner as required tests. Additional PT tests are counted and scored the same way as required tests, and must be at least fifteen (15) calendar days apart.

252:307-9-10. Corrective action

When a laboratory receives an evaluation of not acceptable for any FoA, the laboratory shall determine the cause for the failure and take any necessary corrective action. The laboratory shall then document both the investigation and the action(s) in a corrective action report (CAP). The CAP shall be submitted to the DEQ within forty-five (45) days of the PT report issuance.

252:307-9-11. Alternate PT provider

The DEQ may designate an alternative proficiency testing provider if it determines such designation is appropriate.

PART 3. PERSONNEL AND SUBCONTRACTORS

252:307-9-20. All accredited laboratories

All accredited laboratories shall meet the applicable personnel requirements of the TNI Standards. Educational requirements will be considered only if awarded by an accredited institution of higher education.

252:307-9-21. Subcontractors

A laboratory may subcontract with another laboratory (subcontractor) for performance of environmental analysis. Such subcontracting shall be only for those FoAs for which the subcontractor is DEQ-accredited.

252:307-9-22. Reports to customers

Any analytical report given to a customer by an accredited laboratory shall identify:

(1) the analytes for which the laboratory is DEQ-accredited;
(2) the class of DEQ-issued accreditation of each analyte; and
(3) which analytes were subcontracted out for analysis and the subcontractor's accreditation number for each of the subcontracted analytes.

PART 5. QUALITY SYSTEMS

252:307-9-40. Applicability

The requirements of this Part shall apply to drinking water and general environmental laboratories applying for accreditation or maintaining accreditation.

252:307-9-41. Participation required

A laboratory must meet all quality system requirements specified in the TNI Standard including, as applicable, requirements for asbestos, chemical, microbiological, radiochemical, and toxicity testing.

252:307-9-42. Quality manual

A laboratory shall establish and maintain a written quality manual appropriate to the scope of its activities. At a minimum, the quality manual shall document the laboratory's policies, systems, programs, procedures and instructions in sufficient detail and clarity to allow the history of each sample and associated data to be readily understood. The quality manual shall include or make reference to the laboratory's supporting procedures, including technical procedures, and shall outline the structure of the documentation used in the management system.

PART 7. RECORD KEEPING AND REPORTING

252:307-9-60. Required records

All required laboratory records must be written in a clear and unambiguous manner, be readily available for reference or inspection, and shall include:

(1) **Records of accreditation.** The laboratory shall keep the following records on file at its main facility.
(A) Scope of accreditation and the application on which it is based;
(B) Copies of final reports and quality documents associated with reported data submitted to the DEQ or clients;
(C) Internal audits and quality assurance plans; also
(D) Each laboratory shall maintain on file the list of analytes for which it is accredited, and shall provide a copy of the list upon request.

(2) **Quality manual**, which is addressed in 252:307-9-42;

(3) **Bench records.** All raw data, whether hard copy or electronic data associated with testing, including analysts' worksheets and data output records (chromatograms, strip charts, and other instrument response readout records); date, time, analyst, method, amounts (volume and weights), clean up, separation protocols, incubation periods, calculations, sample matrix, and sample identification.

(4) **Calibration data.** Calibration criteria, frequency and acceptance criteria including the curve or coefficient of the linear equation which describes the calibration curve; concentration/response data (or relative response data) for standards; percent recovery of all calibration checks (MRL, PSC initial) standard and the date it was analytically determined; percent recovery of the continuing calibration check standard; and laboratory sample identification of the samples run with the curve.

(5) **Sample history and associated data.** All data is to be clearly and unambiguously documented so that all steps of the method are indicated. This shall include but is not limited to the following: Date, analyst, type of extraction or digestion for each sample, and laboratory sample identification.

(6) **Surrogate and tracer records.** Surrogates or tracers, when required, are chosen to reflect the chemistries of the targeted components of the method and are added prior to sample preparation/extraction. The laboratory shall document the amount of surrogate or tracer spiked, percent recovery of each surrogate, date, analyst, and laboratory sample identification. The results are compared to the acceptance criteria as published in the method. If there are no established criteria, the laboratory shall determine internal criteria and document the method used to establish the limits.

(7) **Maintenance logs.** Maintenance logs shall be kept for each instrument, to include dates and description of repairs, preventive maintenance, malfunctions, and other actions or events affecting performance. All instruments not in service must be tagged out of service. Maintenance logs shall also be kept for all devices that are necessary to support laboratory operations. These include, but are not limited to: balances, ovens, refrigerators, freezers, incubators, water baths, temperature measuring devices (including thermometers and thermistors), thermal/pressure sample preparation devices and volumetric dispensing devices (such as Eppendorf [Registered Trademark] or automatic dilutor/dispensing devices), if quantitative results are dependent on their accuracy, as in standard preparation and dispensing or dilution into a specified volume. Each balance shall be annually serviced and calibrated by a recognized accredited metrological service.

(8) **Corrective action procedures.** Procedures for evaluating, documenting and reporting corrective action used for audits, PT failures, out-of-control situations and in response to enforcement actions.

(9) **Quality protocols.** Procedures for monitoring the validity of the environmental testing and the resulting data shall be recorded in such a way that trends are detectable, and statistical techniques shall be applied to the reviewing of the results. All laboratories shall have documentation

for positive and negative controls, variability, repeatability, and accuracy of the method.

(10) **Chain of custody and sample accession.** Procedural plans for sample login, unique sample identification (all sample containers), date, time, source of sample (including name, location (location code) and sample matrix), preservative used, analysis required, name of collectors and any pertinent field data.

(11) **Spike duplicates and spike-duplicate data.** The laboratory shall document procedures for determining the effect of the sample matrix on method performance. These procedures relate to the analyses of quality system matrix-specific quality control samples, and are designed as data quality indicators for a specific sample using the designated method. Information shall include but is not limited to: date, analyst, laboratory sample number, amount spiked, percent recovery, percent of difference, and makeup and concentration in the spiking solution.

(12) **Electronic data.** All electronic data including security, software documentation and verification, software and hardware audits, backups, and records of any changes to automated data entries shall be preserved.

(13) **Sensitivity, LOD/LOQ.** Procedures used for determining limits of detection and quantitation shall be documented. Documentation shall include the quality system matrix type. All supporting data shall be retained. LOQ shall be verified annually within the established control limits.

252:307-9-61. Record retention

(a) The laboratory shall have a plan to ensure that the records are maintained and transferred according to the clients' instructions in the event that a laboratory transfers ownership or goes out of business. In addition, applicable regulatory and state legal requirements concerning laboratory records shall be followed routinely.

(b) Records shall be retained for a minimum of five (5) years from generation of the last entry in the record.

SUBCHAPTER 11. SECONDARY ACCREDITATION

252:307-11-1. DEQ as a secondary accreditation body

(a) The DEQ shall grant accreditation to laboratories accredited by any other TNI primary accreditation body in accordance with 27A O.S.§ 2-4-306 on a laboratory-by-laboratory basis. No additional proficiency testing, quality assurance, or on-site assessment requirements for the fields of testing for which the laboratory holds primary TNI accreditation shall be required.

(b) When granting secondary accreditation to a laboratory, the DEQ shall grant accreditation:

(1) for only the fields of testing, methods and analytes for which the laboratory holds current accreditation from a primary AB, and that fall within the scope of this Chapter; and

(2) issue certificates to the applicant laboratory within 30 calendar days of receipt of the laboratory's application unless potential noncompliance with TNI standards is noted.

252:307-11-2. Potential noncompliance when DEQ is secondary AB

(a) If the DEQ notes any potential noncompliance with the TNI standards by a laboratory during the initial application process for secondary accreditation, the DEQ shall immediately notify, in writing, the applicable TNI-recognized primary AB.

(b) The applicant laboratory is to be notified only in situations where no administrative or judicial prosecution is contemplated.

(c) The notification must cite the applicable sections within the TNI standards for which noncompliance by the laboratory has been noted.

(d) If the alleged noncompliance is noted during the initial application process for secondary accreditation, final action on the application shall not be taken until the alleged noncompliance issue has been resolved.

(e) If the alleged nonconformance is noted after the secondary accreditation has been granted, the laboratory shall maintain its current secondary accreditation status until the alleged noncompliance issue has been resolved.

252:307-11-3. Potential noncompliance when DEQ is primary AB

(a) When the DEQ receives notification of potential noncompliance from a secondary AB, it shall review and investigate the alleged noncompliance and take appropriate action in accordance with 252:307-5-4, including the addition of any change of accreditation status in the TNI National Environmental Laboratory Accreditation Database.

(b) Within 20 days of the notification of potential noncompliance from a secondary AB, the DEQ shall respond in writing with a copy to the secondary AB, providing the following information:

(1) an initial report of the findings;

(2) a description of the actions to be taken; and

(3) a schedule for implementation of corrective action, if necessary.

252:307-11-4. Dispute resolution between primary and secondary accreditation bodies

If, in the opinion of DEQ, a secondary AB or primary AB does not take timely and appropriate action on DEQ's complaint, DEQ may notify the TNI Accreditation Council of the dispute between the two accreditation bodies regarding proper disposition of the complaint.

[OAR Docket #15-552; filed 6-15-15]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 515. MANAGEMENT OF SOLID WASTE

[OAR Docket #15-554]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
252:515-1-8. Special considerations [AMENDED]
Subchapter 3. Permit Provisions and Applications
Part 1. General Provisions
252:515-3-5. Duration of permit [AMENDED]
Subchapter 15. Methane Gas Monitoring and Control~~Applicability~~
252:515-15-4. Installation of gas monitoring probes [AMENDED]
Subchapter 21. Used Tire Processing, Certification, Permits and Compensation
Part 5. Used Tire Transportation
252:515-21-51. Used tire manifests [AMENDED]
Part 9. Erosion Control, River Bank Stabilization and Other Conservation Projects
252:515-21-92. Eligibility requirements [AMENDED]
Subchapter 41. Roofing Material Recycling
252:515-41-8. Variance from the rules of this Chapter [AMENDED]
252:515-41-15. Closure [AMENDED]
AUTHORITY:
Environmental Quality Board, 27A O.S. §§ 2-2-101, 2-10-201, 2-10-301(D) and 2-11-401.6; Solid Waste Management Advisory Council, 27A O.S. § 2-2-201.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 7, 2014
COMMENT PERIOD:
December 1, 2014 through January 14, 2015, and February 20, 2015.
PUBLIC HEARING:
Before the Solid Waste Management Advisory Council at 9:00 a.m. on January 15, 2015, in the Multi-Purpose Room, first floor of the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102.
Before the Environmental Quality Board at 9:30 a.m. on February 20, 2015, in the Multi-Purpose Room, first floor of the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102.
ADOPTION:
February 20, 2015
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 27, 2015
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 8, 2015
FINAL ADOPTION:
June 8, 2015
EFFECTIVE:
September 15, 2015
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATION BY REFERENCE:
N/A
ANALYSIS:
The Department is proposing to amend OAC 252:515-15-4 and OAC 252:515-1-8(J) by requiring gas monitoring probes to be constructed with a sampling port to make sampling techniques more consistent and allow a representative sample to be obtained without purging or emitting gas to the atmosphere. In response to a legislative change to 27A O.S. § 2-10-301(D), the Department is proposing to amend OAC 252:515-3-5 by allowing DEQ to specify timelines within permits for the construction and operation of new disposal facilities. In response to an unattainable requirement, the Department is proposing to amend OAC 252:515-21-92 by removing the requirement that 50% of priority cleanup list tires come from illegal dumps. The Department is proposing to amend OAC 252:515-21-51 to remove the requirement that Used Tire Manifests have to be four parts and carbonless. The Department is also proposing to amend OAC 252:515-41 by removing a reference to an invalid citation and clarifying closure cost estimate procedures.

CONTACT PERSON:
Mike Stickney, Land Protection Division, Solid Waste Compliance Section, P.O. Box 1677, Oklahoma City, OK 73101-1677, e-mail at Mike.Stickney@deq.ok.gov, phone 405-702-5100, or fax 405-702-5101.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2015:

SUBCHAPTER 1. GENERAL PROVISIONS

252:515-1-8. Special considerations

(a) **Existing permits.** Permits for active solid waste disposal facilities issued under previous rules, and those in the post-closure monitoring period on the effective date of this Chapter, remain in effect.

(b) **Permit upgrades.** Within 180 days of the effective date of this Chapter, the owner/operator of the following solid waste disposal facilities shall submit a permit modification application to the DEQ to ensure compliance with certain requirements of this Chapter.

(1) **MSWLFs and C&D landfills.** Permit modifications for MSWLFs and C&D landfills shall include:

(A) a legal description, by metes and bounds; section, township, and range, or parts thereof; or book and page number of plat records for platted property, of both on- and off-site soil borrow areas, if applicable;

(B) a temporary easement in accordance with OAC 252:515-3-34(c);

(C) a stormwater management plan to demonstrate how compliance with the requirements of Subchapter 17 of this Chapter will be achieved and maintained;

(D) a disposal plan in accordance with OAC 252:515-19-34(c) through (f) for out-of-state waste, if applicable;

(E) a vegetative cover plan to ensure compliance with the requirements of OAC 252:515-19-54, if applicable;

(F) revised closure plans to ensure closure of on- and off-site soil borrow areas in accordance with OAC 252:515-25-32(b)(3)(A), if applicable;

(G) life of site calculations in accordance with OAC 252:515-27-8(c), except for those facilities owned by units of the federal government;

(H) revised closure, post-closure, and/or corrective action cost estimates calculated in accordance with Part 5 of Subchapter 27 of this Chapter, except for those facilities owned by units of the federal government;~~ and~~

(I) a new or revised waste exclusion plan meeting the requirements of Subchapter 29 of this Chapter; and

(J) sampling ports for gas monitoring probes to meet the requirement of OAC 252:515-15-4(a)(2).

(2) **NHIW landfills.** Permit modification applications for generator-owned and operated NHIW landfills shall include those items identified in (1)(A), (1)(B), (1)(C), (1)(F), (1)(G) and (1)(H) of this Subsection, as well as a revision to the groundwater monitoring program to ensure compliance with OAC 252:515-9-31(d)(3).

(3) **Regulated medical waste processing facilities.** Permit modification applications for regulated medical waste processing facilities shall include the information identified in (1)(B) and (1)(H) of this Subsection.

(4) **Transfer stations.** Permit modification applications for transfer stations shall include the information in (1)(I) of this Subsection.

(c) **Compliance required.**

(1) Except as provided in (2) of this Subsection, permit upgrades identified by (b) of this Section shall be implemented within one year of the effective date of this Chapter. Extensions may be granted by the DEQ for good cause shown.

(2) All solid waste disposal facilities required to establish and maintain financial assurance shall ensure financial assurance mechanisms are funded in the appropriate amount based on approved cost estimates.

(d) **MSWLFs prior to October 9, 1991.** MSWLFs that stopped receiving waste prior to October 9, 1991 are subject to the final cover and post-closure monitoring requirements of the permit and the rules in effect at the time of closure.

(e) **MSWLFs on or after October 9, 1991.** MSWLFs receiving waste on or after October 9, 1991 are subject to this Subsection.

(1) **Less than 100 tons per day of waste.** No later than October 9, 1994, MSWLFs that received less than an average of 100 tons per day of solid waste after October 9, 1991 and stopped receiving waste before April 9, 1994 shall install final cover meeting the requirements of OAC 252:515-19-53.

(A) **Post-closure monitoring requirements.** MSWLFs shall be subject to the post-closure monitoring requirements of the permit and rules in effect at the time of closure.

(B) **Failure to stop accepting waste or to apply final cover.** MSWLFs that accepted waste on or after April 9, 1994, or failed to install the final cover by October 9, 1994 shall be subject to all applicable requirements of this Chapter.

(2) **100 tons or more per day of waste.** No later than October 9, 1994, MSWLFs that received an average of 100 tons or more per day of solid waste after October 9, 1991 and stopped receiving waste before October 9, 1993 shall install final cover meeting the requirements of OAC 252:515-19-53.

(A) **Post-closure monitoring requirements.** MSWLFs shall be subject to the post-closure monitoring requirements of the permit and the rules in effect at the time of closure.

(B) **Failure to stop accepting waste or to apply final cover.** MSWLFs that accepted waste on or after October 9, 1993 or failed to install the final cover by October 9, 1994 shall be subject to all applicable requirements of this Chapter.

(f) **Other disposal facilities.** Other solid waste disposal facilities that stopped receiving waste prior to the effective date of this Chapter shall close, and perform any applicable post-closure monitoring, in accordance with the permit and the rules in effect at the time of closure.

(g) **Corrective action.** The DEQ may require corrective action any time an inspection of a solid waste disposal facility or review of testing data indicates the actual release of contaminants into the environment. Such corrective action shall be performed in accordance with the requirements of this Chapter.

SUBCHAPTER 3. PERMIT PROVISIONS AND APPLICATIONS

PART 1. GENERAL PROVISIONS

252:515-3-5. Duration of permit

(a) **Life of site.** Permits shall be issued for the life of the disposal facility, subject to the limitations of (b) of this Section.

(b) **Commencement of construction and operation.** DEQ may specify timelines within permits for commencement of construction and operation of new disposal facilities.

(~~b~~c) **Cessation of operations.** If a permitted active disposal facility ceases to accept waste for 30 days or more without prior notice to the DEQ, the facility is deemed to be in the process of final closure.

(~~c~~d) **Suspended operations.** Development or operations of a disposal facility may be suspended. To do so, the owner/operator must:

(1) provide prior written notice to the DEQ of the intent to suspend development or operations;

(2) renew such notice annually;

(3) if site development or operations remain suspended for more than one year, perform closure and post-closure activities in accordance with the approved closure and post-closure plans, and Subchapter 25 of this Chapter; and

(4) if financial assurance is required, post full financial assurance in accordance with Subchapter 27 of this Chapter and the approved cost estimates.

(~~d~~e) **Resuming operations.** If facility operations cease pursuant to (~~b~~c) or (~~c~~d) of this Section, then prior to resuming such operations, the permit must be modified if, in the opinion of the DEQ, the permit does not comply with all current laws and regulations.

SUBCHAPTER 15. ~~APPLICABILITY~~METHANE GAS MONITORING AND CONTROL

252:515-15-4. Installation of gas monitoring probes

(a) **Construction.**

(1) Gas monitoring probes shall be constructed in accordance with the requirements of the OWRB (see OAC

252:515-7-3) of a minimum one-inch diameter schedule 40 or 80 polyvinyl chloride, stainless steel, Teflon or high density polyethylene pipe.

(2) Gas monitoring probes shall be constructed with a sampling port.

(b) **Location.** Gas monitoring probes shall be located no more than 1000 feet apart along the permit boundary, with the following exceptions.

(1) **Off-site structures.** If there are off-site structures located within one-half mile of the facility permit boundary, the spacing shall be no more than 500 feet between each probe along the permit boundary on the sides where these structures are located.

(2) **Alternative spacing or locations.**

(A) The DEQ may approve alternative probe spacing or locations if physical impediments prevent installation along the permit boundary or if other unique physical features at the facility warrant a revised probe placement strategy.

(B) A thorough justification for the revised probe placement strategy shall be submitted as part of the gas monitoring plan required by OAC 252:515-15-3.

(c) **Minimum depth.** Gas monitoring probes shall be installed to a minimum depth equivalent to the deepest placement of waste and be screened for the entire depth of waste.

(d) **As-built drawings.** Within 90 days of installation, detailed as-built drawings of the probes shall be submitted to the DEQ to demonstrate the probes were installed in accordance with this Section.

SUBCHAPTER 21. USED TIRE PROCESSING, CERTIFICATION, PERMITS AND COMPENSATION

PART 5. USED TIRE TRANSPORTATION

252:515-21-51. Used tire manifests

(a) **Manifest required.** Any person who transports more than 10 used or used tires over Oklahoma roads to or from destinations within the state must have a manifest documenting the proper disposition of the tires. All parties must fully complete and sign the manifest. Designated copies must be given to each used tire generator, transporter, and receiving facility reflected on the manifest.

(1) **Used tire reimbursement manifest.** A Used Tire Reimbursement Manifest must be used for transportation of used tires to a used tire facility entitled to receive compensation from the fund. A ~~four-part, carbonless paper~~manifest~~ form~~, numbered in sequence so that each ~~manifest~~ has a unique identifying number, shall be provided by the used tire facility.

(2) **Used tire tracking manifest.** A Used Tire Tracking Manifest must be used for transportation of used tires to any location other than a used tire facility. A~~ three-part, carbonless paper~~ manifest~~ form~~, numbered in sequence so that each~~ manifest~~ has a unique identifying number, shall be provided by the used tire generator or transporter.

(b) **Accuracy of manifests and tire weights.** Manifests shall be complete and accurate in all details and accompanied by weight tickets from certified scales which show the weight of the load collected and transported or accepted for processing by the QACT.

(c) **Inaccurate, incomplete, or insufficient manifest.** DEQ may not certify QACTs for tires which are processed if the manifests for those tires are incomplete, unreadable, not dated and signed by all parties, not accompanied by a weight ticket, or in any other respect cannot be relied upon to show that the tires were collected, transported and processed pursuant to the Act.

(d) **Signatory.**

(1) **Generator.** The used tire manifest shall be signed by the generator of the used tires, all transporters, and the receiving facility.

(2) **Used tire dump.** If the tires are from a tire dump, the landowner or authorized representative shall sign the manifest as the generator. If the landowner is unknown or unavailable or resides out of state, DEQ may authorize another signatory prior to the removal of any used tires.

(e) **Recordkeeping.** Within 30 days of receipt of the used tires, a completed copy of the manifest shall be returned to the used tire generator. Copies of the manifest shall be maintained by the generator, transporter, and receiving facility for a period of five years.

PART 9. EROSION CONTROL, RIVER BANK STABILIZATION AND OTHER CONSERVATION PROJECTS

252:515-21-92. Eligibility requirements

(a) **Use of proper tires.** Annually, at least 3% to 6% of the used tires for which compensation will be requested must come from tire dumps identified on the PCL or from community-wide cleanup events in the State of Oklahoma and installed in accordance with this Part and the permit or other authorization from the United States Army Corps of Engineers or a local Conservation District.~~ In addition, at least 50% of the required annual PCL percentage must be from tire dumps.~~

(b) **Used tire collection.** The Erosion Control Installer (ECI) shall comply with 27A O.S. § 2-11-401.4(C)(3)(b).

(c) **Project completion report.** Upon completion of the project, the ECI shall submit a project completion report to DEQ, certifying the project was completed in accordance with the approved design plans. The report shall include the following:

(1) the name, address and telephone number of the applicant;

(2) the tire dump from which tires came, if any, and DEQ identification number;

(3) identification of the community-wide cleanup event from which tires came, if any;

(4) quantity of tires removed from the tire dump or community-wide cleanup event, by tire type;

(5) name and location of the approved project;

(6) quantity and type of tires delivered to and installed at the project;

(7) a copy of the permit or other authorization issued by the United States Army Corps of Engineers or local Conservation District;

(8) a copy of the planting plan developed in conjunction with and approved by the Division of Forestry of the Oklahoma Department of Agriculture, Food, and Forestry;

(9) verification the landowner agrees to complete the planting plan described in (8) of this Subsection;

(10) documentation to verify compliance with (d) of this Section, if applicable; and

(11) other information required by DEQ.

(d) **Proper disposal.** The ECI shall dispose of any used tires not needed for the project at a permitted used tire processing or other used tire recycling facility, or a permitted solid used disposal facility.

(e) **DEQ inspection.** After submittal of the project completion report, DEQ shall inspect the project and the project file to determine compliance with the Act, the rules in this Subchapter, and project plans.

(f) **Project complete.** If the project is complete, DEQ shall notify the ECI in writing, with copies to the Oklahoma Department of Agriculture, Food, and Forestry, and the United States Army Corps of Engineers or local Conservation District, as appropriate.

(g) **Project incomplete.** If any aspect of the project is not complete, DEQ shall give written notification of the deficiencies to the ECI, who shall respond accordingly. In such cases, partial compensation may be authorized in accordance with OAC 252:515-21-74.

(h) **Recordkeeping.** Records required by this Part shall be maintained by the ECI for a period of five years after completion of the project.

SUBCHAPTER 41. ROOFING MATERIAL RECYCLING

252:515-41-8. Variance from the rules of this Chapter

(a) **Application.** ~~Except as provided for in (c) of this Section, applicants~~Applicants may, in a permit application, request a variance from one or more provisions of this Chapter in accordance with 27A O.S. § 2-10-304.

(b) **Technical considerations.** Applicants requesting a variance must demonstrate that operations under the variance will equal or exceed the protection accorded by the particular rule for which the variance is being requested, and will not result in a hazard to the health, environment, or safety of the people of this State or their property.

252:515-41-15. Closure

(a) **Closure plan.** Roofing material recycling facilities shall submit, with their permit application, a closure plan addressing the following items:

(1) removal and disposal of all roofing material permitted to be stored on site;

(2) removal of equipment and temporary buildings and other improvements not designated as permanent in the permit application; and

(3) grading and re-vegetation of the site.

(b) **Cost estimates.** Cost estimates for closure shall be based upon the cost for removal and disposal, by a third party not affiliated with the owner/operator, of the maximum amount of roofing material permitted to be stored on site at any time, removal of equipment, temporary buildings, and re-vegetation.

(c) **Closure cost estimate procedures.** The following determinations shall be submitted to DEQ for approval:

(1) identification of the task(s) for which bids will be provided;

(2) a statement of work fully describing the actions necessary for completion of the task(s) identified; and

(3) written bids from three independent contractors not affiliated with the owner/operator. The bids shall be dated within 30 days of submittal and be an estimate of the contractor's cost for performing the work identified in the statement of work on behalf of the State of Oklahoma. The closure cost estimate shall be calculated as the average of the bids.

[OAR Docket #15-554; filed 6-15-15]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 515. MANAGEMENT OF SOLID WASTE

[OAR Docket #15-555]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 21. Used Tire Processing, Certification, Permits and Compensation

Part 3. Used Tire Facilities

252:515-21-32. Facility operation requirements [AMENDED]

Part 7. Compensation from the Used Tire Indemnity Fund

252:515-21-71. Eligibility requirements [AMENDED]

AUTHORITY:

Environmental Quality Board, 27A O.S. §§ 2-2-101, 2-10-201, 2-10-301(D) and 2-11-401.6; Solid Waste Management Advisory Council, 27A O.S. § 2-2-201.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

February 27, 2015

COMMENT PERIOD:

December 1, 2014 through January 14, 2015, and February 20, 2015.

PUBLIC HEARING:

Before the Solid Waste Management Advisory Council at 9:00 a.m. on January 15, 2015, in the Multi-Purpose Room, first floor of the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102.

Before the Environmental Quality Board at 9:30 a.m. on February 20, 2015, in the Multi-Purpose Room, first floor of the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102.

ADOPTION:

February 20, 2015

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

February 27, 2015

APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 8, 2015
FINAL ADOPTION:
June 8, 2015
EFFECTIVE:
September 15, 2015
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The Department is proposing to amend OAC 252:515-21-32 and 515-21-71 by removing the requirement that fifty percent of priority cleanup list tires come from illegal dumps. Due to the success of tire dump remediation efforts, the referenced percentage requirement is now unattainable.
CONTACT PERSON:
Mike Stickney, Land Protection Division, Solid Waste Compliance Section, P.O. Box 1677, Oklahoma City, OK 73101-1677, e-mail at Mike.Stickney@deq.ok.gov, phone 405-702-5100, or fax 405-702-5101.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2015:

SUBCHAPTER 21. USED TIRE PROCESSING, CERTIFICATION, PERMITS AND COMPENSATION

PART 3. USED TIRE FACILITIES

252:515-21-32. Facility operation requirements

(a) **General.** Used tire facilities are subject to the requirements of Part 3 of OAC 252:515-19, except 19-33.

(b) **Acceptable wastes.** Only used tires shall be accepted at a used tire facility.

(c) **Maximum storage.**

(1) **Used tires.** The number of used tires stored at any time shall not exceed 250,000 or the maximum number authorized by the permit, whichever is less.

(2) **Processed tires.** The amount of processed tire material stored at any time shall not exceed the amount accumulated from three years of operation or the amount for which financial assurance has been provided, whichever is less.

(d) **Tires awaiting processing.** Used tires stored on the ground while awaiting processing shall be placed in orderly piles, as follows:

(1) the base shall not exceed 200 feet by 150 feet;

(2) the height of the pile shall not exceed seven feet and

(3) side slopes shall not be greater than two horizontal to one vertical slope.

(e) **Processed material storage.** If processed tire material is stored in piles, the piles shall meet the following:

(1) the base shall not exceed 200 feet by 150 feet;

(2) the height of the pile shall not exceed 20 feet; and

(3) stable side slopes shall be maintained.

(f) **Tire dumps.** Annually, at least 3% to 6% of the used tires processed must be collected from tire dumps identified on the PCL or through DEQ approved community-wide clean-up events in the State of Oklahoma. ~~In addition, at least 50% of the required annual PCL percentage must be from tire dumps.~~

(g) **Restricted areas.**

(1) **Fire lane.** An unobstructed fire lane at least 50 feet in width shall be maintained around the perimeter of each tire pile and each processed tire material pile located outdoors.

(2) **Buffer zone.** A clean buffer zone of at least 75 feet shall be maintained between tire piles or processed tire materials and adjacent properties.

(h) **Weighing processed materials.** Each load of processed tire material shall be weighed on scales tested and certified in accordance with the requirements of the Oklahoma Department of Agriculture, Food and Forestry.

(1) Each truck and/or trailer shall be weighed full and empty.

(2) Gross and tare weights shall be imprinted on the same weight ticket.

(3) Stored tare weights shall not be used.

(i) **Daily log.** A daily log shall be maintained for each load of used tires received. The daily log shall accurately reflect:

(1) the name and address of the hauler;

(2) the counted number of tires from each used tire source;

(3) the name and address of each used tire source;

(4) the number of tires processed each day; and

(5) the use and destination of each daily outbound load of processed tire material.

PART 7. COMPENSATION FROM THE USED TIRE INDEMNITY FUND

252:515-21-71. Eligibility requirements

(a) **Eligible used tires for processing.** The following used tires are eligible for compensation from the Fund: motor vehicle tires pursuant to Section 1-134 of Title 47 of the Oklahoma Statutes for which a fee has been assessed by a tire dealer or motor license agent; tires used on implements of husbandry and agricultural equipment that are not more than fourteen (14) inches wide and forty-four (44) inches in diameter;

(b) **Tires collected under a state tire program.** Any used tire collected in accordance with the requirements of the Oklahoma Used Tire Recycling Act is not considered to be discarded. A tire that can be used, reused or legally modified to be reused for its original intended purpose shall not be a used tire.

(c) **Qualified applicants.** The following are eligible to receive compensation from the fund only for the processing or recycling of those used tires referred to in (a) of this section:

(1) used tire facilities;

(2) Erosion Control Installers who, as a landowner or on behalf of a landowner, have obtained a permit or other authorization from the United States Army Corps of Engineers or a local Conservation District for the use of used tires for erosion control, river bank stabilization, or other

conservation projects on the property of the landowner; and

(3) tire derived fuel facilities; and

(4) units of local or county governments who have a DEQ approved plan to bale used tires for use in engineering projects.

(d) **Collection and transportation.** Qualified applicants are eligible to receive compensation from the fund only for the collection and transportation of the used tires referred to in (a) of this section.

(e) **PCL and community-wide cleanup event requirement.** At least 3% to 6% of the used tires for which compensation will be requested must come from tire dumps or landfills identified on the PCL and from community-wide cleanup events in the State of Oklahoma. The QACT shall not receive credit toward the 3% to 6% requirement until the collection efforts are approved by DEQ.~~ In addition, at least 50% of the required annual PCL percentage must be from tire dumps.~~

(f) **Apportionment.** If the Used Tire Recycling Indemnity Fund (Fund) contains insufficient funds in any month to satisfy the eligible reimbursements under the Act, DEQ shall apportion the payments among the qualified applicants according to the following formula. Divide the total amount of the Fund available for disbursement by the total authorized reimbursements requested by the qualified applicants. The result is expressed as a percentage. Multiply this percentage by the amount requested and authorized for each qualified applicant, resulting in the apportionment for that qualified applicant.

(~~f~~g) **Additional Compensation.** DEQ shall allocate any remaining monies in the fund to remediate tire dumps. Costs may be determined by cost estimates or unit costs developed by DEQ. Used tire facilities or TDF facilities that remediate tire dumps assigned by DEQ may request reimbursement from the Used Tire Recycling Indemnity Fund upon completion of the remediation as determined by DEQ.

[OAR Docket #15-555; filed 6-15-15]

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

[OAR Docket #15-556]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Introduction
252:606-1-1 [AMENDED]
252:606-1-2 [AMENDED]
252:606-1-4 [AMENDED]
252:606-1-6 [AMENDED]
Subchapter 3. Discharge Permitting Process for Individual and General Discharge Permits
252:606-3-3 [AMENDED]
Subchapter 5. Discharge Permit Requirements
252:606-5-2 [AMENDED]
Subchapter 8. Biosolids Requirements
252:606-8-6 [AMENDED]
Subchapter 11. Tests and Reports
252:606-11-2 [AMENDED]
252:606-11-4 [AMENDED]
AUTHORITY:
Environmental Quality Board, 27A O.S. § 2-2-101; Water Quality Management Advisory Council, 27A O.S. § 2-2-201; and 27A O.S. §§ 1-3-101, 2-3-202, 2-3-402, 2-3-501, 2-6-103, 2-6-203, 2-6-402 and 2-6-501.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 7, 2014
COMMENT PERIOD:
December 1, 2014 to December 31, 2014
PUBLIC HEARING:
Before the Council on January 13, 2015, and before the Environmental Quality Board on February 20, 2015
ADOPTION:
February 20, 2015
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 27, 2015
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 8, 2015
FINAL ADOPTION:
June 8, 2015
EFFECTIVE:
September 15, 2015
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
Incorporated standards:
Date of 40 CFR provisions incorporated by reference in these rules is changed to "as published on July 1, 2014."
Incorporating rules:
OAC 252:606-1-3
Availability:
The standards are on file at the Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma, 73102, and are available to the public for examination Monday through Friday between the hours of 8:00 a.m. and 4:30 p.m.
ANALYSIS:
The proposed regulations will: (1) amend definitions and other language consistent with applicable laboratory accreditation rules; (2) update the publication date of the federal regulations incorporated by reference from July 1, 2013 to July 1, 2014; (3) clarify language regarding OPDES permit applications; (4) clarify terms related to discharge permits; (5) clarify that biosolids analyses must be performed by an accredited laboratory and to allow a university familiar with Oklahoma crops and soils to perform certain soils analysis; (6) clarify that compliance test results must be from an accredited laboratory; (7) clarify that discharge monitoring reports are to include all valid compliance test results; and (8) clarify OPDES facility recordkeeping requirements.
CONTACT PERSON:
Mark Hildebrand, (405) 702-8100 or Mark.Hildebrand@deq.ok.gov (Procedural, legal and technical questions). The DEQ is located at 707 N. Robinson, Oklahoma City, Oklahoma 73102. The DEQ's mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2015:

SUBCHAPTER 1. INTRODUCTION

252:606-1-1. Purpose

(a) **Intent.** This Chapter sets the point source, biosolids (sewage sludge), and stormwater permitting standards for

discharges to the waters of the State of Oklahoma from those facilities within the jurisdiction of the Oklahoma Department of Environmental Quality as specified in Title 27A O.S. § 1-3-101. This Chapter implements the Oklahoma Pollutant Discharge Elimination System Act, which begins at Title 27A O.S. § 2-6-201 of the Oklahoma Statutes. This Chapter applies to any person or entity that land applies biosolids or prepares it for firing in a biosolids (sewage sludge) incinerator, in addition to those facilities that discharge wastewater to waters of the state.

(b) **Other rules apply.** This Chapter applies in addition to other rules. This Chapter governs the effluent discharged from municipal wastewater treatment systems (constructed under OAC 252:656) and industrial wastewater treatment systems (constructed under OAC 252:616), and current DEQ Laboratory Accreditation rules. The discharges regulated by this Chapter must not cause a violation of the Oklahoma Water Quality Standards (OAC 785:45).

(c) **Exclusion.** This Chapter does not apply to:

(1) discharges from marine toilets, as prohibited by Title 63 O.S. §4213;

(2) discharges of dredge and fill material under the jurisdiction of the United States Corps of Engineers under Section 404 of the Federal Clean Water Act. Water in a treatment system is not waters of the State of Oklahoma;

(3) Septage. See OAC 252:645;

(4) Biosolids pilot studies that are conducted by a qualified research institute familiar with the crops and soils of this state for the beneficial use of biosolids through land application. Such studies are subject to conditions imposed by the DEQ, including:

(A) the limitation of the total amount of biosolids used must be no more than 25 dry tons for any one project or 50 dry tons for all pilot studies approved by the DEQ for the same institute in the same year;

(B) compliance with:

(i) The metal ceilings established in Table 1 of 40 CFR §503.13(b);

(ii) One of the vector attraction reduction alternatives; and

(iii) The pathogen reduction requirements of 40 CFR §503.32(a);

(C) written approval from the DEQ Executive Director or his designee prior to the commencement of operations;

(D) the period during which biosolids may be applied to the land is eighteen 18 months or less, unless extended by the DEQ;

(E) notification to the DEQ of the cessation of land application at the site; and

(F) periodic reporting.

(5) Biosolids co-fired in an incinerator with other wastes or for the incinerator in which biosolids and other wastes are co-fired are regulated under the appropriate Air Quality Rules. Other wastes do not include auxiliary fuel, as defined in 40 CFR § 503.41(b), fired in a sewage sludge incinerator.

(6) Sludge generated at an industrial facility during the treatment of industrial wastewater, including sludge generated during the treatment of industrial wastewater combined with domestic sewage.

(7) Use of biosolids determined to be hazardous in accordance with 40 CFR Part 261 which must be disposed of in a manner in accordance with the Oklahoma Hazardous Waste Management Act and rules promulgated thereunder;

(8) Ash generated during the firing of biosolids in a sewage sludge incinerator;

(9) Grit (e.g., sand, gravel, cinders, or other materials with a high specific gravity) or screenings (e.g., relatively large materials such as rags) generated during preliminary treatment of domestic sewage in a treatment works.

(10) Biosolids with a concentration of ~~PCBs~~Polychlorinated Biphenyl (PCB) equal to or greater than 10 milligrams per kilogram (10.0 mg\kg) of total solids (dry weight basis) may not be land applied under this Chapter. Disposal must be in accordance with OAC 252:515 ("Management of Solid Waste" rules) and applicable federal requirements under the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*

252:606-1-2. Definitions

In addition to terms defined in Title 27A of the Oklahoma Statutes, the following words or terms, when used in this Chapter, have the following meaning unless the context clearly indicates otherwise:

"Accredited laboratory" means a laboratory accredited through the DEQ laboratory accreditation program.

~~**"Approved laboratory"** means a laboratory accepted by the DEQ laboratory accreditation program.~~

"Beneficial use" means the use of biosolids or wastewater through land application for the purpose of soil conditioning, or crop or vegetative fertilization, or erosion control, or the use of wastewater for dust suppression where fugitive dust control would otherwise be an air quality problem, in a manner which does not pollute or tend to pollute the waters of the State of Oklahoma, the environment or pose a risk to human health.

"Best professional judgment" or "BPJ" means the technical opinion developed by a permit drafter after consideration of all reasonably available and pertinent data or information which forms the basis for the terms and conditions of a discharge permit, and the use of sound engineering analysis of the industry, the nature and quantity of potential pollutants which may be produced and of the proposed treatment plant.

"Biosolids" means primarily organically treated wastewater materials from municipal wastewater treatment plants that are suitable for recycling as amendments. This term is within the meaning of "sludge" referenced in 27A O.S. § 2-6-101(11). Biosolids are divided into the following classes:

(A) Class A Biosolid~~s~~ meets the pathogen reduction requirements of 40 CFR § 503.32 (a);

(B) Class B Biosolid~~s~~ meets the pathogen reduction requirements of 40 CFR § 503.32 (b).

"Bypass" means the intentional or unintentional diversion of waste streams from any portion of a treatment, disposal or collection facility.

"Compliance Testing" means any chemical, physical or bacteriological tests conducted in accordance with permit requirements.

~~**"Control tests"** means chemical, physical or bacteriological tests, including visual observations made by or under the supervision of an operator to control plant performance, determine the quality of plant effluent and determine stream conditions.~~

"Control tests" means any chemical, physical or bacteriological tests, including visual observations, performed to aid in operational decisions and to control wastewater treatment system performance.

"CFR" means the Code of Federal Regulations.

"CROMERR" means the Cross-Media Electronic Reporting Rule.

"DEQ" means the Oklahoma Department of Environmental Quality.

"Discharge point" means the point at which pollutants, wastewater or stormwater enters waters of the state or become waters of the state.

"DMR" means "Discharge Monitoring Report".

"EPA" means the United States Environmental Protection Agency.

"Generator" or **"operator"** means authorized person under whose ownership or management authority, biosolids are used or disposed.

"Impoundment" or **"Surface impoundment"** have the same meaning used in OAC 252:616-1-2.

"Industrial user" means industrial users subject to categorical pretreatment standards and "significant industrial users" as those terms are used in 40 CFR, Part 403.

~~**"Laboratory checks"** means chemical, physical or bacteriological tests, including visual observations made on samples submitted by the operator or other authorized representatives to confirm the quality of the samples or to standardize plant control tests and procedures.~~

"Land application" means the application of biosolids onto a land surface; injection below land surface; or spreading biosolids onto land surface followed by incorporation into the soil. Land application does not include the disposal of biosolids in a municipal solid waste landfill permitted by the DEQ, or the use of Class A biosolids whose production is permitted by the DEQ.

"Listed metal" means those metals listed in Tables I, II, and III of 40 CFR, Part 503.13.

"Loading rate" means the amount (concentration or mass) of constituents or parameters applied to a unit area per application.

"NRCS" means Natural Resources Conservation Service.

"OAC" means Oklahoma Administrative Code.

"OS" means Oklahoma Statutes.

"Oklahoma Water Quality Standards" means the Oklahoma Water Resources Board rules (OAC 785:45) which classify waters of the state, designate beneficial uses for which the various waters of the state must be maintained and protected, and prescribe the water quality required to sustain designated uses.

"Operating records and reports" means the daily record of data connected with the operation of the system compiled in a monthly report on forms approved by the DEQ.

"Prior converted cropland" means those croplands as defined or used in the Federal Swampbuster Provisions located at Title 16, USC, §§ 3821 through 3823.

"USC" means United States Code.

"USGS" means United States Geological Survey.

252:606-1-4. Date of federal regulations incorporated

When reference is made to 40 CFR it means, unless otherwise specified, the volume of 40 CFR as published on July 1, ~~2013~~2014.

252:606-1-6. Spill reporting

(a) **Report.** The owner or operator of a facility or vessel must report to the DEQ any spill or discharge to the waters of the state on or from the facility or vessel according to 40 CFR Part 117. Reports to the DEQ may be telephoned to the Complaints Hotline at (800) 522-0206.

(b) **Response.** Whenever a spill or discharge occurs that is required by 40 CFR Part 117 and this rule to be reported to the DEQ, the owner or operator of the facility or vessel must immediately act to stop, contain, clean up and prevent recurrence of the spill or discharge.

SUBCHAPTER 3. DISCHARGE PERMITTING PROCESS FOR INDIVIDUAL AND GENERAL DISCHARGE PERMITS

252:606-3-3. ~~Draft~~ OPDES permit

~~(a) Appropriate reporting requirements, including a requirement that analyses reported for industrial discharges must be performed by laboratories certified by the DEQ and that analyses reported for municipal discharges must be performed by an operator certified by the DEQ, as specified in this Chapter.~~

(a) **OPDES permit applications.** When submitting a permit application for the initial issuance or re-issuance of an OPDES permit:

(1) analyses reported for industrial discharges must be performed by laboratories accredited by the DEQ, and

(2) analyses reported for municipal discharges must be performed at a minimum by an operator certified by the DEQ, as specified in this Chapter.

(b) **Additional OPDES permit requirements.** The DEQ may include in the ~~draft~~ permit statements of, or may incorporate by reference, any attachment to the permit which contains appropriate conditions, plans, limitations and other requirements relating to municipal lagoons, industrial surface impoundments, sludge management plans, or land application of sludge or wastewater associated with the discharging facility or activity ~~and~~ subject to the DEQ's jurisdiction and pursuant to DEQ rules and regulations.

SUBCHAPTER 5. DISCHARGE PERMIT REQUIREMENTS

252:606-5-2. Technology-based methodologies

Technology-based methodologies include:

(1) **Industrial permits.** Effluent limitation guidelines for industry categories and pollutants are promulgated by the EPA pursuant to the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 and Water Quality Act of 1987. EPA guidelines are adopted and incorporated by reference in 252:606-1-5. If there are no industry category or pollutant guidelines applicable to the applicant's industry, BPJ of the permit writer applies.

(2) **Municipal permits.**

(A) Technology-based limitations for municipal discharges are based upon the definition of "secondary treatment". The Oklahoma definition of "secondary treatment" is more stringent than the EPA definition under 40 CFR Part 133. Subparagraphs (B) through (G) of this paragraph contain the EPA approved definition of "secondary treatment" for the State of Oklahoma, which is used in the development of wasteload allocations in the municipal point source inventory.

(B) For facilities discharging to perennial streams, "secondary treatment" is defined as:

(i) A monthly average of 30 mg/l ~~BOD_5~~Biochemical Oxygen Demand - 5 day (BOD_5). A ~~$CBOD_5$~~Carbonaceous Biochemical Oxygen Demand - 5 Day ($CBOD_5$) of 25 mg/l is considered to be equivalent to a BOD_5 of 30 mg/l.

(ii) A weekly average of 45 mg/l BOD_5. A $CBOD_5$ of 40 mg/l is considered to be equivalent to a BOD_5 of 45 mg/l.

(iii) The monthly average percent removal for BOD_5 or $CBOD_5$ cannot be less than 85%.

(iv) A monthly average of 30 mg/l total suspended solids (TSS).

(v) A weekly average of 45 mg/l TSS.

(vi) The monthly average percent removal for TSS cannot be less than 85%.

(vii) The pH must be maintained between the limits of 6.5 and 9.0 standard units.

(C) For discharges to intermittent streams (those with 7-day, 2-year, low flow of zero) and for any discharge to a lake as defined in this Section, secondary treatment is defined as:

(i) A monthly average of 20 mg/l BOD_5. A $CBOD_5$ of 18 mg/l is considered to be equivalent to a BOD_5 of 20 mg/l.

(ii) A weekly average of 30 mg/l BOD_5. A $CBOD_5$ of 25 mg/l is considered to be equivalent to a BOD_5 of 30 mg/l.

(iii) The monthly average percent removal for BOD_5 or $CBOD_5$ cannot be less than 85%.

(iv) A monthly average of 30 mg/l TSS.

(v) A weekly average of 45 mg/l TSS.

(vi) The monthly average percent removal for TSS cannot be less than 85%.

(vii) The pH must be maintained between the limits of 6.5 and 9.0 standard units.

(D) For discharges where treatment is solely provided by lagoons, whether the discharge is to a perennial or an intermittent stream, secondary treatment is defined as:

(i) A monthly average of 30 mg/l BOD_5. A $CBOD_5$ of 25 mg/l is considered to be equivalent to a BOD_5 of 30 mg/l.

(ii) A weekly average of 45 mg/l BOD_5. A $CBOD_5$ of 40 mg/l is considered to be equivalent to a BOD_5 of 45 mg/l.

(iii) The monthly average percent removal for BOD_5 or CBOD5 cannot be less than 65%.

(iv) A monthly average of 90 mg/l TSS.

(v) A weekly average of 135 mg/l TSS.

(vi) The pH must be maintained between the limits of 6.5 and 9.0 standard units.

(vii) Subparagraph (D) does not apply to a discharge to a lake as defined in this Section.

(E) For purposes of this Section, a discharge to a lake is any discharge from a point source which is either a direct discharge into a lake, or within 5 river miles upstream of the conservation pool of any lake.

(F) For purposes of this Section, a lake is an impoundment of the waters of the state which exceeds 50 acre-feet in volume which:

(i) is owned or operated by a unit of government,

(ii) appears in Oklahoma's Clean Lakes Inventory, or

(iii) is a privately-owned lake which has beneficial uses similar to those of publicly-owned or operated lakes.

(G) For purposes of this Section, percent removal is a percentage expression of the removal efficiency across a treatment plant for a given pollutant parameter, as determined from the monthly average values of the raw wastewater influent pollutant concentrations to the facility and the monthly average values of the effluent pollutant concentrations for a given time period.

(3) **Municipal treatment greater than secondary.** In the CWA Section 208 "Water Quality Management Plan for Oklahoma," Appendix B, the only specific wasteload allocation numbers assigned are those that apply to facilities showing a need for treatment greater than secondary (e.g., 10 mg/l BOD_5, 15 mg/l TSS, and 2 mg/l NH_3-N). All other facilities receive an allocation of secondary.

(4) **Municipal secondary treatment.** In the CWA Section 208 "Water Quality Management Plan for Oklahoma," Appendix B, determination of the actual effluent limits for a facility with an allocation of secondary can be accomplished by finding the stream class (perennial or intermittent) and the current treatment process (mechanical plant or lagoon, etc.). For example, an activated sludge

facility (mechanical plant) that discharges into a perennial stream will have effluent limits of 30 mg/l BOD_5 and 30 mg/l TSS as found in paragraph (2) of this Section.

(5) **Municipal bacterial limits.** The Executive Director may establish in discharge permits limitations for bacteria where:

(A) the proposed discharge is a "discharge to a lake" as defined in this Section, or

(B) the proposed discharge may otherwise adversely affect the beneficial uses of the waters of the state.

SUBCHAPTER 8. BIOSOLIDS REQUIREMENTS

252:606-8-6. Land application of biosolids

(a) **Compliance.** All permittees shall operate a land application site pursuant to the terms of the DEQ issued permit and DEQ approved sludge management plan.

(b) **Requirements.**

(1) **Certification.** When required by the DEQ, the owner, generator or operator must certify that the land application system will be operated according to this Chapter.

(2) **One applier.** A land application site shall be used by only one land applier at a time unless the DEQ approves other users.

(3) **Subsequent use for land application.** The DEQ may approve a previously used land application site for subsequent land application.

(4) **Multiple sources.** A land applier who owns or operates more than one source facility or surface impoundment may utilize the same land application site for the application of biosolids from the multiple facilities or impoundments with prior written approval of the DEQ.

(5) **Topography.** A land application site must have minimal slope or be contoured to prevent ponding and soil erosion. No application can occur on land having a slope exceeding five percent (5%) but less than ten percent (10%) unless erosion or runoff controls are implemented for liquid biosolids. Land having a slope greater than ten percent (10%) may be utilized for land application of dewatered and dried biosolids only with DEQ approval.

(6) **Off-site hauling.** The owner, generator or operator must prevent biosolids and mud from a land application site from being carried off-site. If necessary, biosolids hauling vehicles must be cleaned prior to leaving the site and the rinse water disposed of in accordance with DEQ rules.

(7) **Manner.** Land apply sludge in a manner to prevent surface runoff and to control objectionable odors. Incorporate sludge into the soil before the end of each working day. Do not store or land apply, or allow to run off, sludge or wastewater to wetlands or waters of the state. Discharges to waters of the state are prohibited without a discharge permit under OAC 252:606.

(8) **pH limits.** Any site with soil having a natural pH of less than 5.5 cannot be used for the land application of biosolids unless the soil pH is amended prior to application of biosolids. Documentation of soil amendment must be placed in the land applier's compliance records.

(9) **Phosphorus and nitrogen.** Annual biosolids land application rate cannot exceed nitrogen and phosphorus rates for the crop grown and cannot be applied in rates that result in phytotoxicity.

(10) **Soil sampling.**

(A) **Sample and analysis.** All background and annual soil sampling and analyses must be of a composite sample taken from an area 80 acres or less in size for each site proposed or used for the land application of biosolids. The DEQ may approve larger sampling areas on a case by case basis. Soil testing procedures applicable for use in the local area in accordance with Oklahoma State University soil testing guidance or the local NRCS may be used.

(B) **Operational soil monitoring.** A land applier must collect representative soil samples and have them analyzed as follows:

(i) For soil pH and the nutrients - nitrogen (N), ammonia (NH_4), nitrates (NO_3), potassium (K) and phosphorus (P) prior to the next annual application of biosolids;

(ii) For metals in Table 3 of 40 CFR § 503.13(b) after every third year of use prior to the fourth year of use; and

(iii) For all required background metals prior to the fourth year of biosolids application on each site.

(11) ~~**Laboratory analyses.** All laboratory analyses required by this Chapter must be performed by an approved laboratory.~~**Laboratory analyses.**

(A) All biosolids analyses required by this Subchapter must be performed by an accredited laboratory.

(B) All soil analyses performed under 606-8-6(b)(10)(B)(i) must be performed by an accredited laboratory or by a university laboratory that demonstrates to the reasonable satisfaction of the DEQ to have the analytical expertise and be familiar with Oklahoma crops and soils.

(12) **Monitoring wells.** The DEQ may require monitor wells and boreholes in connection with the land application of biosolids. These wells must be designed, constructed and plugged in accordance with OAC 785:35.

(c) **Restrictions.**

(1) **Weather.** Do not land apply when the ground is frozen or saturated.

(2) **Endangered or threatened species.** Land application cannot occur if it is likely to adversely affect a threatened or endangered species listed under Section 4 of the federal Endangered Species Act, 16 U.S.C. 1533(c), or the critical habitat of such species.

(3) **Metal and selenium concentration limits.** A land applier must notify the DEQ by telephone within 24 hours and follow up with a written report if the metal or selenium

concentrations exceed those in 40 CFR § 503.13(b)(3) (Table 3) or risk the revocation of the land application permit. Municipal biosolids that exceed the metal or selenium concentration limits set forth in 40 CFR, § 503.13(b)(1) (Table 1) cannot be land applied, but may be:

(A) incinerated at an incinerator permitted by the DEQ; or

(B) disposed at a solid waste landfill permitted by the DEQ for such waste disposal. Any biosolids disposed in a landfill must meet the pathogen and vector reduction requirements of this Subchapter.

(4) **Heavy Metals.** The DEQ shall not approve the land application of biosolids that contains heavy metals above the concentration ranges normal to biosolids or sludges with a demonstrated effectiveness on Oklahoma soils, unless the permittee provides a study on the effects of the biosolids on a variety of Oklahoma soils and crops found at the location of the proposed land application site. Said study shall:

(A) be conducted by a qualified research institute familiar with crops and soils in Oklahoma and approved by the DEQ;

(B) be included with the sludge management plan; and

(C) demonstrate the effect of the sludge during four (4) growing seasons.

(5) **Biosolids generated outside the State of Oklahoma.** For municipal biosolids, whether Class A or Class B generated outside the State of Oklahoma, the biosolids produced shall meet all federal and state statutory requirements and the DEQ shall receive and approve test results demonstrating the quality of the biosolids, including samples of each load of biosolids performed by an independent laboratory approved by the DEQ and an agreement that the DEQ may perform random quality assurance sampling at the site of the generation of the biosolids prior to any biosolids coming into the State of Oklahoma.

(6) **Karst soils.** The use of land application sites that overlie areas subject to karstification (i.e. sink holes or underground streams generally occurring in areas underlain by limestone, gypsum or dolomite), is prohibited, unless approved by the DEQ.

SUBCHAPTER 11. TESTS AND REPORTS

252:606-11-2. Laboratory analyses and reporting

(a) **~~Certified laboratories~~ Compliance test results.** Analytical results~~ provided to the DEQ~~ obtained through compliance testing must be from ~~laboratories certified by the DEQ for the parameters reported, and be analyzed according to approved procedures (OAC 252:300, Laboratory Accreditation)~~ an accredited laboratory. ~~Laboratories~~ Non-accredited laboratories at municipal wastewater treatment plants must have operators certified under OAC 252:710.

(b) **Sample collection.** Collect samples during normal operation and representative of the discharge, according to 40 CFR § 136.3 Table II (containers, preservation and holding times).

(1) A grab sample must consist of one sample collected in less than a 15-minute period.

(2) A composite sample must consist of at least three discrete samples of equal volume taken at equal time intervals over the composite period, or taken proportional to flow rate, and combined into one. 24-hour composite samples must contain at least 12 discrete samples. The number of discrete samples must be increased where the wastewater loading is highly variable.

(3) Continuous or totalized samples must be continuously and automatically taken or recorded.

(c) **Flow measurement.** Determine the volume of flow at the time of sample collection and report it with the analytical results. Measurement devices and methods must be installed, calibrated and maintained to measure flows within 10% of true discharge rates. Records of pump running times and rates, if accurate, may be used to calculate total daily flow.

(d) **DMR reports.** The results of all valid compliance tests must be used to complete DMR forms (DEQ-approved discharge monitoring report form; see 40 CFR § 122.41(L)(4)(i)). Mail DMR forms ~~(DEQ-approved discharge monitoring report form; see 40 CFR § 122.41(L)(4)(i))~~ to the Water Quality Division at the frequency required in the permit. ~~Report daily average and maximum flow rates in MGD unless the permit specifies otherwise.~~ Any DMR report submitted to DEQ pursuant to this Chapter shall be submitted on forms provided by DEQ and shall be delivered to DEQ:

(1) in person,

(2) by mail, or

(3) electronically, provided the electronic submission meets the requirements of 252:4-17.

252:606-11-4. Records

(a) **Operating records.** Keep a daily record of the control tests required in Appendix A of this Chapter on forms prepared or approved by the DEQ. Make entries for the date samples are collected and indicate where and by whom the observations were made. If monitoring beyond the minimum requirements, include the results of all analyses on the monthly report and use them to calculate weekly or monthly averages. For each required measurement or sample, record:

(1) The date, exact place and time of sample and indicate whether a grab sample or composite.

(2) The dates the analyses were performed.

(3) The laboratory and name of the operator who performed each analysis.

(4) The analytical techniques or methods used.

(5) The results of all analyses.

(6) The instantaneous flow at the time of grab sample collection or a record of each flow taken while collecting a composite sample.

(7) The method of composite sample calculations and other calculations.

(b) **Maintain records.** The facility owner must keep records of all ~~laboratory checks and~~ control and compliance~~tests~~ testing, a copy of the monthly operational report and all laboratory

work sheets for at least three (3) years. These records must be available for inspection by DEQ personnel.

[OAR Docket #15-556; filed 6-15-15]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 627. OPERATION AND MAINTENANCE OF WATER REUSE SYSTEMS

[OAR Docket #15-557]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
252:627-1-3. [AMENDED]
252:627-1-5 [AMENDED]
252:627-1-6 [AMENDED
Subchapter 3. Operation and Maintenance
252:627-3-1 [AMENDED]
252:627-3-3 [AMENDED]
252:627-3-5 [NEW]
Subchapter 5. Sampling, Record Keeping and Reporting Requirements
252:627-5-1 [AMENDED]
AUTHORITY:
Environmental Quality Board, 27A O.S. § 2-2-101; Water Quality Management Advisory Council, 27A O.S. § 2-2-201; and 27A O.S. §§ 1-3-101, 2-3-202, 2-3-402, 2-3-501, 2-6-103, 2-6-203, 2-6-402 and 2-6-501.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 7, 2014
COMMENT PERIOD:
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PUBLIC HEARING:
Before the Council on January 13, 2015, and before the Environmental Quality Board on February 20, 2015
ADOPTION:
February 20, 2015
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 27, 2015
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 8, 2015
FINAL ADOPTION:
June 8, 2015
EFFECTIVE:
September 15, 2015
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed regulations will: (1) remove the requirement to obtain a permit to supply for the use of reclaimed water within the wastewater treatment plant boundaries; (2) add buffer zone and setback distance requirements; (3) reserve Category 1 as a future category of reclaimed water; (4) add permitted uses for Category 2 and Category 3 reclaimed water; (5) add Category 6 (use of reclaimed water within boundaries of a wastewater treatment plant) to the list of categories of reclaimed water; (6) add permitted uses for Category 6 reclaimed water; (7) add a requirement for supplier to maintain flow measurement device in proper working order; (8) revise regulatory references for Category 3 and 4 reclaimed water use restrictions; (9) add requirements for using Category 6 reclaimed water; and (10) clarify that Category 6 reclaimed water must meet effluent limits, but no additional sampling is required.
CONTACT PERSON:
Mark Hildebrand, (405) 702-8100 or Mark.Hildebrand@deq.ok.gov (Procedural, legal and technical questions). The DEQ is located at 707 N. Robinson, Oklahoma City, Oklahoma 73102. The DEQ's mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2015:

SUBCHAPTER 1. GENERAL PROVISIONS

252:627-1-3. Permit requirements

(a) **Requirement for Permit to Construct.** No one shall construct, modify or operate a water reuse system without first obtaining a Permit to Construct pursuant to OAC 252:656.

(b) **Requirement for Permit to Supply.** No one shall supply reclaimed water without first obtaining a Permit to Supply pursuant to this Section~~.~~, except when using reclaimed water within the wastewater treatment plant boundaries pursuant to Category 6.

(c) **Applications for Permits to Supply.** Applications for Permits to Supply Reclaimed Water shall be submitted to DEQ at least six (6) months prior to the anticipated start date for supplying reclaimed water and shall include the following:

(1) a complete and signed application;

(2) the required permit application fee;

(3) a copy of the Permit(s) to Construct the water reuse treatment and distribution system; and

(4) a copy of the binding user agreement between the supplier and each user of the reclaimed water.

(A) Agreements between suppliers and users of Categories 2 through 4 reclaimed water shall contain the following minimum provisions:

(i) A statement that the user shall operate all reclaimed water distribution systems in compliance with all applicable DEQ regulations.

(ii) A statement that the user shall allow the supplier reasonable access to all site(s) to determine whether the user is operating its facilities in compliance with the applicable DEQ regulations, and/or performing all required monitoring and analysis.

(iii) Documentation evidencing the user's legal interest in all locations where reclaimed water is being used.

(B) Category 5 user agreements are subject to the provisions of OAC 252:656-25-2(d).

(d) **Duration.** Permits to Supply are operating permits that expire five (5) years from the date of issuance.

(e) **Renewals for Permits to Supply.** Suppliers shall submit applications to renew existing Permits to Supply at least six (6) months prior to the permit's expiration date.

(f) **Responsibility.** Suppliers shall be responsible for assuring that users operate all reclaimed water distribution sites in compliance with DEQ regulations.

252:627-1-5. General requirements for water reuse systems

(a) **Unauthorized wastes.** Suppliers shall take reasonable measures to prevent the introduction of unauthorized industrial wastewater, hazardous substances, chemicals or wastes into water reuse systems.

(b) **Protection of potable water supplies.** Suppliers shall prevent cross-connections between wastewater, water reuse and potable water supplies.

(c) **Discharges prohibited.** Suppliers shall ensure that all parts of water reuse systems are operated and maintained so that there are no unpermitted bypasses or discharges of wastewater or reclaimed water from the system. All such bypasses and/or discharges shall be considered violations of this Chapter and shall be subject to enforcement as an unpermitted discharge to waters of the state in violation of the Oklahoma Pollutant Discharge Elimination System Act.

(1) **Reporting requirement.** Suppliers shall ensure that any and all bypasses and/or discharges from water reuse systems are reported to DEQ at (800) 522-0206 within 24-hours of an incident and that a completed and signed DEQ Form 605-011 "Self Reporting Wastewater Bypass Form" is submitted to DEQ within five (5) days of the incident.

(2) **Required response.** Suppliers shall ensure that immediate action is taken to stop, contain, clean up and prevent recurrence of bypasses or discharges.

(d) **Certified operator required.** Suppliers shall have at least one certified operator employed at all times for each water reuse system. Operators shall be certified pursuant to OAC 252:710.

(e) **Noncompliance reporting.** Suppliers shall report any chlorine residual, turbidity and/or fecal coliform violations within twenty-four (24) hours from the time suppliers become aware of a violation(s) by calling DEQ at (800) 522-0206. A written report describing the reason for the violation and the steps taken to correct the violation shall be submitted to DEQ within five (5) days of discovery of the violation.

(f) **User inspection program.** A supplier may become approved by DEQ to inspect the supplier's users' storage and distribution systems in lieu of DEQ performing the inspections.

(1) **Applications.** A supplier may become approved by submitting the following to DEQ:

(A) a copy of the binding user agreement(s) between the supplier and all of its users;

(B) a copy of the supplier's proposed inspection form, which shall include:

(i) the date and time of inspection;

(ii) the name of the inspector;

(iii) whether separation distances are met;

(iv) whether all steps necessary to prevent bypasses have been taken;

(v) whether there was evidence of ponding of reclaimed water;

(vi) the application rate of reclaimed water, if applicable;

(vii) the type of vegetative cover, if applicable;

(viii) whether the area where reclaimed water is used is secure;

(ix) whether disinfection requirements are being met;

(x) whether flushing plan has been followed; and

(xi) whether the reclaimed water is being used in compliance with the permit.

(C) documentation that the supplier's inspector has completed a DEQ approved water reuse training class;

(2) **Duties.** Once approved, a supplier shall:

(A) Perform annual inspections at each of its users' reclaimed water distribution sites. The supplier shall complete and maintain on-site an inspection form for each inspection completed; and

(B) review water reuse regulations with users.

(g) **DEQ's right to inspect.** Nothing in this section shall affect DEQ's statutory right to enter and inspect users' facilities.

(h) **Use of accredited laboratories.** All laboratory analyses required to be conducted pursuant to this Chapter shall be performed by laboratories accredited by DEQ.

(i) **Separation Distances.** Buffer zones and setback distances shall be maintained in accordance with OAC 252:656-27-2-(b).

252:627-1-6. Permitted uses of reclaimed water

The following are the permitted uses of reclaimed water by category:

(1) **Category 1.** Reserved

(~~1~~2) **Category 2.** Category 2 reclaimed water shall only be used for the permitted uses in Categories 3, 4 and 5, and:

(A) drip irrigation on orchards or vineyards;

(B) spray or drip irrigation on sod farms, public access landscapes and public use areas/sports complexes, including unrestricted access golf courses;

(C) toilet and urinal flushing;

(D) fire protection systems;

(E) commercial closed-loop air conditioning systems;

(F) vehicle and equipment washing (excluding self-service car washes); ~~and~~

(G) range cattle watering~~.~~; and

(H) make-up water for oil and gas production.

(~~2~~3) **Category 3.** Category 3 reclaimed water shall only be used for the permitted uses in Categories 4 and 5, and:

(A) subsurface irrigation of orchards or vineyards;

(B) restricted access landscape irrigation;

(C) irrigation of livestock pasture;

(D) concrete mixing;

(E) dust control;

(F) aggregate washing/sieving;

(G) new restricted access golf course irrigation systems;

(H) industrial cooling towers~~, and~~once-through cooling systems, and closed loop systems such as boiler feed water; ~~and~~

(I) restricted access irrigation of sod farms.; and

(J) hydraulic fracturing.

(~~3~~4) **Category 4.** Category 4 reclaimed water shall only be used for the permitted uses in Category 5 and:

(A) soil compaction and similar construction activities; and

(B) existing restricted golf course irrigation systems utilizing water that has received primary treatment in lagoon systems. Permits to construct shall not be issued for new Category 4 restricted access golf course irrigation systems pending further research and evaluation of performance data collected from existing systems.

(~~4~~5) **Category 5.** Category 5 reclaimed water shall only be used for:

(A) restricted access pasture irrigation for range cattle;

(B) restricted access irrigation of fiber, seed, forage and similar crops; and

(C) irrigation of silviculture.

(6) **Category 6.** Category 6 reclaimed water, which does not require a permit to supply, shall only be used within the wastewater treatment plant and includes:

(A) dilution water for chemicals used in the process such as polymers,coagulants, chlorination or dechlorination;

(B) mechanical seal water for gas compressors, pumps and other equipment;

(C) mechanical seal water and cooling water for pumps;

(D) odor and gas absorption including bio-filters used for odor control;

(E) centrifuge flushing;

(F) flushing grit and sludge pipes;

(G) gravity thickener make-up water;

(H) supply water for filter backwash;

(I) headworks screen washing;

(J) headworks screening washer-compactors;

(K) belt filter press;

(L) other reclaimed water that is permanently plumbed to a fixed nozzle and contained within unit operations;

(M) yard hydrants; and

(N) hose bibs.

SUBCHAPTER 3. OPERATION AND MAINTENANCE

252:627-3-1. Distribution system

(a) **Maintenance.** Suppliers shall maintain the structural integrity of all parts of the distribution system and maintain it in good working order.

(b) **Connections.** Suppliers shall maintain the integrity of the distribution system by inspecting all connections to the distribution system.

(c) **Erosion control.** Suppliers shall provide erosion protection for all parts of the distribution system located in or near waterways or flood plains.

(d) **Pump stations.** Suppliers shall ensure that pump stations are properly maintained and operated by doing the following:

(1) Securing pump stations to prevent unauthorized access.

(2) Maintaining the pumps in working condition.

(3) Keeping the screens free of debris to prevent clogging.

(4) Maintaining the required alarms in working order.

(5) Maintaining the required back-up generators and/or portable engine driven pumps in working order.

(6) Maintaining a complete set of operational instructions, emergency procedures and maintenance schedules.

(e) **Flushing Plan.** Suppliers shall have and implement comprehensive plans, approved by DEQ, for flushing reclaimed water within storage and distribution systems pursuant to OAC 252:656-27-4(e). Flushing plans shall also be included in the reclaimed water systems' O&M manuals [OAC 252:656-3-10] and in the suppliers' DEQ approved inspection programs [OAC 252:627-1-5(f)].

(f) **Flow Measurement.** Supplier shall maintain flow measuring device in proper working order.

252:627-3-3. Requirements for using Categories 3 and 4 reclaimed water

(a) **Operation and maintenance.** The following operation and maintenance requirements shall apply to areas where Categories 3 or 4 reclaimed water is used:

(1) **Legal access to site.** Suppliers shall have continued legal access to all areas that are being irrigated with Category 3 or 4 reclaimed water.

(2) **Equipment maintenance.** Suppliers shall ensure that all distribution and irrigation equipment is maintained in working order.

(b) **Restrictions.** Suppliers shall ensure that Category 3 or 4 reclaimed water is not used:

(1) from a lagoon cell that receives raw sewage;

(2) on public use areas that have a high potential for skin to ground contact (e.g., football fields, sports complexes and playgrounds);

(3) on golf courses unless irrigation takes place when the public is not allowed to access the sites;

(4) on any food crop that may be consumed raw;

(5) for spray irrigation on orchards or vineyards;

(6) at rates that allow a discharge from the permitted irrigation site;

(7) within one hundred feet (100') of the permitted boundary of the site;

(8) at a rate that exceeds the nitrogen and phosphorus rates for the crop at the site;

(9) at a rate that results in phytotoxicity;

(10) when the dissolved oxygen concentration for Category 4 reclaimed water is less than 2.0 mg/l;

(11) during periods of precipitation or while the soil is saturated or frozen;

(12) on land having a slope greater than five percent (5%);

(13) where there are berms or other barriers on a water reuse site that would cause the pooling or ponding of reclaimed water at the site, nor shall any berms or barriers impede the natural flow of stormwater from the site;
(14) on public use areas during times of use; and
(15) on sod farms unless a period of 30 (thirty) days has elapsed between the last application of Category 3 reclaimed water and harvesting of sod. ~~[See OAC 252:627-1-6(a)(2)(H)]~~[See OAC 252:627-1-6(3)(I)]

252:627-3-5. Requirements for using Category 6 reclaimed water Signs

Yard hydrants and hose bibs must have signs containing the cautionary language found in OAC 252:656-27-4(a).

SUBCHAPTER 5. SAMPLING, RECORD KEEPING AND REPORTING REQUIREMENTS

252:627-5-1. Sampling, reporting and record keeping requirements

(a) **Sampling.** Suppliers shall comply with the sampling requirements in Appendix A. However, Category 6 reclaimed water shall not require separate sampling but shall meet effluent limits pursuant to the OPDES permit and meet Best Management Practices as required in OAC 252:656-3-10 Operation and Maintenance Manual.
(b) **Completing MORs.** Suppliers shall complete DEQ Form 627-001 "Water Reuse System Monthly Operation Report" ("MOR") for each month. The MOR shall contain the following information:
(1) The estimated volume of reclaimed water produced and distributed to each end user;
(2) The results of each sampling event and:
(A) the name of the person taking each sample,
(B) the date and time of sampling,
(C) the date and time the analysis began, and
(D) the name of the laboratory doing the analysis.
(3) The weather conditions during the reuse period;
(4) The type of crop, grass or vegetation irrigated with the reclaimed water, if applicable; and
(5) The loading rates at each water reuse site to verify that agronomic rates are not being exceeded.
(c) **Submission of MORs.** Categories 2 and 4 reclaimed water suppliers shall submit MORs to DEQ by the fifteenth (15th) day of the following month.
(d) **Retention of MORs.** All suppliers of reclaimed water shall maintain MORs on-site for three (3) years and make them available to DEQ upon request
(e) **Record keeping.** Suppliers shall keep all records, including all maintenance records, on site for at least three (3) years and available for review by DEQ upon request.
(f) **Additional reporting, records and/or sampling.** Additional sampling, reporting, and/or records requirements may be included by DEQ in any permit, authorization, order, consent decree, closure plan, remediation plan, or other official document issued by DEQ pursuant to applicable law and the provisions of this Chapter.

[OAR Docket #15-557; filed 6-15-15]

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

[OAR Docket #15-558]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Introduction
252:631-1-2 [AMENDED]
252:631-1-3 [AMENDED]
Subchapter 3. Operations
252:631-3-2 [AMENDED]
252:631-3-4 [AMENDED]
252:631-3-10 [AMENDED]
252:631-3-11 [AMENDED]
AUTHORITY:
Environmental Quality Board, 27A O.S. § 2-2-101; Water Quality Management Advisory Council, 27A O.S. § 2-2-201; and 27A O.S. §§ 1-3-101, 2-3-202, 2-3-402, 2-3-501, 2-6-103, 2-6-203, 2-6-402 and 2-6-501.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 7, 2014
COMMENT PERIOD:
December 1, 2014 to December 31, 2014
PUBLIC HEARING:
Before the Council on January 13, 2015, and before the Environmental Quality Board on February 20, 2015
ADOPTION:
February 20, 2015
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 27, 2015
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 8, 2015
FINAL ADOPTION:
June 8, 2015
EFFECTIVE:
September 15, 2015
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
Incorporated standards:
Date of 40 CFR provisions incorporated by reference in these rules is changed to "as published on July 1, 2014."
Incorporating rules:
OAC 252:631-1-3
Availability:
The standards are on file at the Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma, 73102, and are available to the public for examination Monday through Friday between the hours of 8:00 a.m. and 4:30 p.m.
ANALYSIS:
The proposed changes will: (1) add definitions for "accredited laboratory", "direct integrity test", "indirect integrity monitoring" and "point of connection"; (2) update the date of incorporation by reference for federal regulations from July 1, 2013, to July 1, 2014; (3) replace "laboratory approval" language with "laboratory accreditation"; (4) remove the requirement to determine the disinfection residual once daily at the point(s) of connection to the wholesale system for purchase water systems; (5) modify the requirements for monitoring disinfection residual in the distribution system for purchase water systems; (6) clarify the requirements for submitting fluoridation analytical reports to DEQ and Oklahoma Department of Health

(ODH); (7) clarify the requirements for membrane filtration systems; and (8) clarify recordkeeping requirements for purchase water systems.

The amendments to the federal regulations, which will be incorporated by reference with this proposed rulemaking, were made to 40 C.F.R. 141 Appendix A of Subpart Q (79 FR 10669) to list out all of the possible reporting violations under the Revised Total Coliform Rule that will require Tier 3 public notice to be consistent with Table 1 to 40 C.F.R. § 141.204, and to § 141.852(a)(5) to address a formatting error, § 141.855 is amended by adding a reserved paragraph (d)(2) and § 141.861, paragraph (b)(1) is amended by removing § 141.858 and adding in its place § 141.859.

CONTACT PERSON:

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

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2015:

SUBCHAPTER 1. INTRODUCTION

252:631-1-2. Definitions

In addition to terms defined in Title 27A of the Oklahoma Statutes, the following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:

"Accredited laboratory" means a laboratory accredited through the DEQ laboratory accreditation program.

~~**"Approved laboratory"** means a laboratory certified or approved by EPA, DEQ, or an EPA approved third party certification program (such as the National Sanitation Foundation, and Drinking Water Accreditation Program).~~

"AWWA" means the American Water Works Association.

"Direct Integrity Test" means a physical test applied to a membrane unit in order to identify and isolate integrity breaches.

"DEQ" means the Oklahoma Department of Environmental Quality.

"Disinfection" means a process that inactivates pathogenic organisms in water by chemical oxidants or equivalent agents.

"EPA" means the Environmental Protection Agency.

"Groundwater under the direct influence of surface water" means any water beneath the surface of the ground with significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as *Giardia Lamblia* or *Cryptosporidium*, or significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH that closely correlate to climatological or surface water conditions.

"Indirect Integrity Monitoring" means monitoring some aspect of membrane filtrate water quality that is indicative of the removal of particulate matter.

"Laboratory checks" means chemical, radiochemical, physical, bacteriological, and microbiological tests made in a laboratory approved by the DEQ, on water samples submitted to confirm the quality of the water.

"Maximum contaminant level (MCL)" means the maximum permissible level of a contaminant in a Public Water Supply system that has been determined to be necessary to safeguard the public health as specified in these regulations. MCL are the same as primary drinking water standards.

"Maximum residual disinfectant level (MRDL)" means the level of a disinfectant added for water treatment that may not be exceeded at the consumer's tap without an unacceptable possibility of adverse health effects. Compliance with the MRDL will be determined using the disinfectant concentration measured at the time Total Coliform Rule (TCR) samples are collected.

"OAC" means Oklahoma Administrative Code.

"Operating records and reports" means the daily record of data connected with the operation of the system compiled in a monthly report.

"OWRB" means the Oklahoma Water Resources Board.

"Point of connection (POC)" means the point at which a consecutive system receives water from the wholesale system. This is not the same as a "point of entry."

"Point of entry (POE)" means the point at which a source or combination of sources enters the distribution system.

"Primary Drinking Water Standards" means the same as MCL.

"Protected groundwater free of sanitary defects" means a ground water source that is properly designed and permitted, practices full-time chlorination, and is properly operated and maintained as evidenced by no critical deficiencies on inspections.

"Public Water Supply (PWS) system" means a system, whether publicly or privately owned, which supplies water under pressure to the public through pipes or other constructed conveyances whether receiving payment for same or not. Multi-family dwellings, which are constructed, inspected, and maintained under State Health Department-approved plumbing code, purchase water from a permitted water system, do not provide treatment, and do not resell water, are not classified as a Public Water Supply system. The following are the categories of Public Water Supply systems:

(A) **"Community water system"** means any PWS system that serves at least fifteen (15) service connections used by year-round residents or regularly serves at least twenty-five (25) year-round residents.

(B) **"Non-community water system"** means any PWS system that serves an average of at least twenty-five (25) individuals at least sixty (60) days per year but is neither a community water system nor a non-transient non-community water system.

(C) **"Non-transient non-community (NTNC) water system"** means any PWS system that is not a community water system and that regularly serves at least twenty-five (25) of the same persons over six months per year.

(D) **"Minor water system"** means any other PWS system not included in (A), (B), or (C) of this definition. These water systems may be state licensed

facilities or non-licensed facilities and ~~is~~ are regulated in OAC 252:624.

"Residual disinfectant concentration" means the concentration of disinfectant measured in milligrams per liter (mg/l) in a representative sample of water.

"Secondary standard" means a non-mandatory guideline that has been determined to be desirable to provide acceptable drinking water.

"Slow sand filtration" means a process involving passage of raw water through a bed of sand at low velocity (generally less than 50 gallons/sq.ft./day) resulting in substantial particulate removal by physical and biological mechanisms.

"Source" means any lake, stream, spring or groundwater supply that is used as treated or untreated water for a PWS system.

"Total coliform positive sample" means a sample in which one or more coliform organisms are found.

"Treatment technique" means the practice of a PWS system to properly remove pathogens and total organic carbon.

"Turbidity" means the amount of suspended material in water as measured by Nephelometric Turbidity Units (NTU).

"Water Treatment" means the act of removing contaminants from source water or adjusting water quality by the addition of chemicals, filtration, and other processes, thereby making the water safe for human consumption.

252:631-1-3. Adoption of U.S. EPA regulations by reference

The provisions of Parts 141, "National Primary Drinking Water Regulations," and 143, "National Secondary Drinking Water Regulations," of Title 40 of the Code of Federal Regulations (CFR) as published on July 1, ~~2013~~2014, and the requirements contained therein are, unless otherwise specified, adopted and incorporated by reference.

SUBCHAPTER 3. OPERATIONS

252:631-3-2. ~~Laboratory approval~~Laboratory accreditation

Compliance analyses for coliform, inorganics, organics, radioactivity and corrosivity contaminants must be performed in a laboratory ~~approved by the EPA or the~~ accredited by the DEQ. ~~Laboratory certification must be based upon Safe Drinking Water Act requirements and must be specific to each parameter analyzed.~~ An accredited lab must transmit the analyses to the DEQ in an electronic form acceptable to the DEQ, no later than the first ten (10) days following the month in which the result is received or the first ten (10) days following the end of the required monitoring period. Testing required for compliance with turbidity treatment technique, disinfectant residual, temperature and pH requirements may be performed by a laboratory operator certified by the DEQ. Process control tests may be performed by a laboratory operator certified by the DEQ. ~~The DEQ may approve a laboratory for the purposes of testing for compliance with primary drinking water standards upon written submittal of a request for approval from the owner of the laboratory and upon proof satisfactory to the DEQ that the laboratory:~~

~~(1) possesses sufficient personnel, equipment, and facilities;~~

~~(2) implements an adequate quality control and quality assurance program;~~

~~(3) owns and will continue to own sufficient managerial and financial resources to continuously comply with and implement all requirements of "Standard Methods for the Examination of Water and Wastewater" in accordance with the current "Manual for the Certification of Laboratories Analyzing Drinking Water;" and~~

~~(4) transmits the analyses to the DEQ in an electronic form acceptable to the DEQ, no later the tenth (10th) day of the following month.~~

252:631-3-4. Validation of data

Notwithstanding other provisions of this Chapter, samples that are not properly collected or submitted, not collected by trained and authorized personnel, not analyzed in an ~~approved~~ accredited laboratory, or samples that do not represent the distribution system must not be used to determine compliance with these regulations. Total coliform positive samples, which are due to improper analysis, domestic or other non-distribution plumbing problems, or due to circumstances or conditions that do not reflect water quality in the distribution system must not be counted toward meeting minimum monitoring requirements. The DEQ must document the determination that there are circumstances or conditions that do not reflect water quality in the distribution system. A sample that produces a turbid culture in the absence of gas production, produces a turbid culture in the absence of an acid reaction, exhibits confluent growth, or produces colonies too numerous to count must be invalidated and replaced with another sample within twenty-four (24) hours of notification by the state.

252:631-3-10. Process control tests

Control tests must be performed in accordance with procedures approved by the DEQ.

(1) **Surface water, groundwater under the direct influence of surface water, and springs.**

(A) Systems that use coagulation, settling, softening or filtration must do the following chemical control tests on the filtered water twice a day, record the results on a report form provided or approved by the DEQ, and submit the form to the DEQ Water Quality Division each month, with a copy to the local DEQ representative:

(i) Alkalinity - Phenolphthalein (P);

(ii) Alkalinity - Total;

(iii) Hardness (where softening is used);

(iv) pH value; and

(v) Stability to calcium carbonate (once per day);

(B) Perform jar tests as needed to determine the optimum coagulant dosages for plant control and operation to meet turbidity requirements.

(C) Turbidity and residual disinfection samples must be collected and analyzed in accordance with 40 CFR Part 141, Subparts H and P.

(D) Systems that use membrane filtration shall perform direct integrity testing and indirect integrity monitoring in accordance with 40 CFR Part 141.719(b)(3) and (4).

(2) **Groundwater supplies.** The following tests are required for public water supply systems utilizing groundwater as a source. Test results must be listed as indicated on the appropriate forms and submitted to DEQ:

(A) For all public water supply systems that practice chlorination, the chlorine residual shall be tested and recorded once daily at the POE;

(B) For community and ~~non-transient non-community~~ NTNC public water supply systems: Static level and pumping level of each well must be determined quarterly;

(i) Alkalinity, pH, and stability must be determined at least monthly for community systems and at least quarterly for non-transient non-community water systems;

(ii) Where ion-exchange softening is provided, determine the hardness of the finished water once a day; and

(iii) Where nanofiltration, reverse osmosis or electrodialysis is provided, perform the following chemical control tests on the treated water once a day:

(I) Alkalinity - Phenolphthalein (P),

(II) Alkalinity - Total,

(III) Hardness,

(IV) pH value, and

(V) Stability to calcium carbonate.

(3) **Purchase water systems.** Purchase water systems that are required to maintain a disinfection residual ~~must determine the chlorine residual once daily at the point(s) of connection to the wholesale system or in accordance with a sampling plan approved by DEQ.~~shall monitor the disinfectant residual in the distribution system as follows:

(A) Those serving a population of 1,500 or less shall monitor the disinfectant residual at representative locations in the distribution system at least once every seven days;

(B) Those serving a population of 1,501 to 20,000 shall monitor the disinfectant residual at representative locations in the distribution system at least three times a week on non-consecutive days; or

(C) Those serving a population of greater than 20,000 shall monitor the disinfectant residual at representative locations in the distribution system at least five times a week.

(4) **Special tests.**

(A) Systems that remove iron or manganese must test the raw and finished water weekly for those metals.

(B) Systems that treat or blend for the reduction in concentration of regulated contaminants must monitor the raw and finished water for those contaminants daily in addition to collecting compliance samples.

(C) Threshold odor and other tests may be required by the DEQ based on local conditions.

(D) Systems that treat or blend for the reduction in concentration of nitrates must test the raw and finished water at least once a day for nitrates.

(E) Systems that apply phosphate chemicals in the treatment process must test the finished water at least once a day for phosphates.

(5) **Fluoridation.** Where fluoridation is practiced, the system must:

(A) analyze the water twice a day for fluoride content, both before and after fluoridation;

(B) forward a copy of the analytical report (ODH form No. 561/DEQ form No. 631-001) to the DEQ monthly and keep a copy at the plant (ODH also requires a copy); and

(C) submit a sample of treated water to the DEQ State Environmental Laboratory, or to a DEQ-accredited laboratory, for analysis of fluoride content every month.

(6) **Sampling disinfectants in distribution system.** The following control tests shall be performed in the distribution system for by all systems that disinfect. Sampling points shall be changed regularly so ~~that~~ the system is sampled completely at least once each week or in accordance with a sampling plan approved by DEQ.

(A) **Chlorine.** Systems that use chlorine shall test for free chlorine and total chlorine residual twice a day in the distribution system.

(B) **Chloramines.** Systems that use chloramines shall test for total chlorine residual twice a day in the distribution system. See 252:631-3-3(d) for the requirements for Heterotrophic Plate Counts.

(C) **Other disinfectants.** Systems that use ozone or chlorine dioxide shall perform process control tests in accordance with 40 CFR Section 141.132.

252:631-3-11. Operating records & reports

(a) **Immediate notification to DEQ.** Each system must report to the DEQ by the end of the next business day if any of the following occur:

(1) Waterborne disease outbreak;

(2) Finished water turbidity exceeds 1 NTU;

(3) Chlorine residual falls below 0.2 mg/l at the POE and whether the residual was restored to at least 0.2 mg/l within 4 hours;

(4) Nitrate level exceeds 10 mg/l;

(5) Verification of a positive Fecal Coliform or E. Coli sample; and

(6) Exceedance of the Chlorine Dioxide MRDL.

(b) **Records.** All systems must keep a daily record of the results of required process control tests and list the results of microbiological checks on the dates sampled. The records of all laboratory checks and control tests must indicate when,

where, and by whom the tests were made. The PWS system must complete and submit the original of the DEQ-approved monthly operational report form to the DEQ with a copy to the appropriate local DEQ representative no later than the tenth (10th) day of the following month. Purchase water systems that are required to maintain a disinfection residual must maintain a monthly operational report for DEQ inspection.

(c) **Water treatment systems.**

(1) Systems that provide water treatment must keep:

(A) a daily record of the operations performed in the treatment process;

(B) observations, cost and occurrences related to the operation of the plant; and

(C) the control tests and laboratory checks previously described in 252:631-3-10.

(2) In addition, water treatment plants designed for turbidity and microbial removal must keep:

(A) the number of filtered water turbidity samples taken during the month;

(B) the number and percentage of turbidity samples that are less than or equal to the standards; ~~and~~

(C) the date and value of any turbidity measurements that exceed 1 and 5 NTU. Where continuous monitoring is used, measurements must be recorded every 4 hours during plant operation~~.~~; and

(D) the results of direct integrity testing and indirect integrity monitoring for membrane filtration as required in 252:631-3-10(1)(D).

(d) **Groundwater systems.** Operators of groundwater systems must keep a daily record of all well operations, in addition to the process control tests and laboratory checks required for ground water supplies.

(e) ~~**Purchase water systems.** Purchase water systems that are required to maintain a disinfection residual must submit a monthly operational report to the DEQ of the operation of the system, in addition to required laboratory checks.~~

~~(f)~~ **Record keeping.** All records must be available for inspection by the DEQ and maintained for at least 10 years unless otherwise specified.

[OAR Docket #15-558; filed 6-15-15]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 650. UNDERGROUND INJECTION CONTROL [REVOKED]

[OAR Docket #15-559]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Chapter 650. Underground Injection Control [REVOKED]
AUTHORITY:
Environmental Quality Board; Oklahoma Environmental Quality Code 27A O.S. §2-1-101; Water Quality Management Advisory Council 27A O.S. §2-2-201
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 7, 2014
COMMENT PERIOD:
December 1, 2014 through January 12, 2015
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February 20, 2015
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Approved by Governor's Declaration on June 8, 2015
FINAL ADOPTION:
June 8, 2015
EFFECTIVE:
September 15, 2015
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The proposed rulemaking is to revoke the Chapter 650 Underground Injection Control rules, which pertain to the construction and operation of any injection well facility for the disposal of liquid non-hazardous waste. Chapter 650 was previously revoked; however, due to a technical error, the proposed rulemaking was never recorded with the Office of Administrative Rules. This proposed rulemaking is to correct the error.
CONTACT PERSON:
The contact person is Hillary Young, Chief Engineer, Land Protection Division. She can be reached at Hillary.Young@deq.ok.gov (e-mail), (405) 702-5100 (phone) or (405) 702-5101 (fax). The DEQ is located at 707 N. Robinson, Oklahoma City, Oklahoma 73102. The mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2015:

SUBCHAPTER 1. GENERAL PROVISIONS [REVOKED]

252:650-1-1. Purpose [REVOKED]

~~The rules in this Chapter implement 27A O.S. Supp. 1993, §2-6-701~~

252:650-1-2. Definitions [REVOKED]

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

~~**"Annulus" (plural "annuli")** means the space in an injection or extraction well between a casing string and a tubing string, or between two casing strings, or between a casing string and the rock penetrated by the drill hole. References throughout OAC 252:650 will usually be to an annulus between the innermost of long string casing and the injection tubing.~~

~~**"Application"** means the standard state form(s) for applying for a permit, including any supplemental materials, additions, revisions, or modifications to the form(s).~~

~~**"Aquifer"** means a body of rock or soil that contains sufficient saturated permeable material to conduct groundwater and to yield said groundwater to wells or springs.~~

~~**"Area of review"** means the area within a two mile radius of an existing or proposed liquid non-hazardous waste injection well.~~

~~**"Class I injection well"** means a well for the subsurface emplacement of industrial or municipal wastes below the lowermost aquifer that contains, within one-half mile of the well bore, an underground source of fresh water.~~

~~**"Contaminant"** means any mineral, chemical, biological, or radiological substances or matter introduced by human activity or agency into water, air, soil or rock.~~

~~**"Department"** means the Department of Environmental Quality.~~

~~**"Disposal"** means the final disposition of industrial waste.~~

~~**"Draft denial"** means a document that evidences the Department's tentative decision to terminate a permit.~~

~~**"Draft permit"** means a document that evidences the Department's tentative decision to issue, modify, or reissue a permit.~~

~~**"Environmental Protection Agency (EPA)"** means the United States Environmental Protection Agency.~~

~~**"Executive Director"** means the Executive Director of the Department of Environmental Quality.~~

~~**"Facility"** means an installation for the disposal of industrial waste, including one or more injection wells and all appurtenant equipment, piping, impoundments, tanks and other structures.~~

~~**"Formation"** means a body of consolidated or unconsolidated rock, characterized by a degree of lithologic homogeneity, which is prevailingly, but not necessarily tabular, and is mappable on the earth's surface or traceable in the subsurface.~~

~~**"Formation fluid"** means fluid present in a formation under natural conditions, as opposed to introduced fluids.~~

~~**"Fresh water"** means all waters that contain no more than 10,000 milligrams per liter (mg/l) total dissolved solids, and all waters that are present, or designated as potential, sources of drinking, livestock, or irrigation water.~~

~~**"Groundwater"** means water below the land surface in a zone of saturation.~~

~~**"Hazardous waste"** means waste materials and by-products that are to be discarded by the generator, which are toxic to life, and which are generated in such quantity that they cannot be safely disposed of in properly operated, state-approved sanitary landfills, or in waste or sewage treatment facilities. Hazardous waste may include but is not limited to explosives, flammable liquids, spent acids, caustic solutions, poisons, contained gases, sludge, tank bottoms containing heavy metallic ions, toxic organic chemicals, infectious materials, and materials such as paper, metal, cloth or wood which are contaminated with hazardous waste. Domestic sewage is specifically excluded from classification as hazardous waste.~~

~~**"Industrial waste"** means any waste generated as a result of an industrial or commercial process, procedure, or activity.~~

~~**"Injection well"** means a well into which fluids are or will be injected. An injection well shall be taken to include all casing, tubing, packers, and associated equipment and materials, up to the main injection cut-off valve at the well head, and include all associated meters, gauges or devices (including but not limited to injection and annulus pressure, temperature, flow, pH, viscosity and specific gravity) used to monitor performance of the well regardless of the point of connection.~~

~~**"Liquid non-hazardous waste"** means waste that:~~

~~(A) contains less than eighteen percent (by weight) solids;~~

~~(B) is generated by any industrial, commercial, or municipal process, procedure, or activity; and~~

~~(C) is not designated as a hazardous waste. Liquid non-hazardous waste includes liquid forms of "other industrial waste" as defined by Solid Waste and Sludge Management Rules, OAC 252:500.~~

~~**"One-hundred year flood plain"** means the area adjoining a stream, river, watercourse, lake or other body of surface water that has been or may be inundated by a one-hundred year flood.~~

~~**"Permit"** means an authorization to dispose of liquid non-hazardous waste, issued by the Department to a facility in accordance with, and to ensure compliance with, this Chapter.~~

~~**"Person"** means any individual, corporation, industry, firm, partnership, association, venture, trust, institution, federal, state or local governmental instrumentality, agency or body or any other legal entity however organized.~~

~~**"Plugging"** means limiting or stopping the flow of fluids into or out of a formation or part thereof through a borehole or well which penetrates the formation, by way of obstructing the borehole or well with cement, clay, mechanical plugging devices, or some combination thereof.~~

~~**"Potentially affected zone"** means that area surrounding an injection well or injection well field in which the pressure change resulting from an injection operation may cause injected fluid, formation fluid, or a combination thereof to enter an underground source of fresh water.~~

~~**"Site"** means the surface area on which a facility is located.~~

~~**"Stratum"** (plural "strata") means a single bed or layer, regardless of thickness, that consists of generally the same kind of rock material.~~

~~**"Surface impoundment"** or **"impoundment"** means a part of a facility that is a natural topographic depression, man-made excavation, or diked area, formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquids, sludges, or semi-solids containing free liquids. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.~~

~~**"Surface water"** includes but is not limited to water that stands on the surface of the land in reservoirs, lakes, ponds, sloughs, or swamps, or that flows across the land in rivers, creeks, or streams.~~

~~**"Tank"** means a self-supporting stationary device designed to contain an accumulation of wastes, and constructed primarily of non-earthen materials (e.g., concrete, steel, plastic), which provide structural support.~~

~~**"Well"** means a bored, drilled, driven, or dug hole or shaft, the depth or length of which is greater than its diameter (or, if not a round hole or shaft, greater than the largest diagonal or major axis of the surface opening).~~

~~**"Zone of saturation"** means a subsurface zone in which essentially all the interstices are filled with water under pressure greater than that of the atmosphere. Although the zone may contain interstices filled with gas or liquids other than water, it is still considered saturated. This zone is separated from the zone of aeration by the water table, and is synonymous with phreatic zone.~~

252:650-1-3. Basis and authority [REVOKED]

~~OAC 252:650 is promulgated and adopted pursuant to 27A O.S. Supp. 1993, §2-2-101 and §2-6-701.~~

252:650-1-4. Applicability [REVOKED]

~~Any person who operates or proposes to operate any injection well facility for the disposal of liquid non-hazardous wastes shall be subject to OAC 252:650.~~

252:650-1-5. Permit [REVOKED]

~~Disposal of liquid non-hazardous waste shall be performed only at facilities that have valid permits issued by the Department.~~

252:650-1-6. Permit duration [REVOKED]

~~Permits issued under the authority of OAC 252:650 shall be effective on the date of issuance and shall remain in effect for five years thereafter. Said permits shall expire at the end of the five year period, unless the permittee submits an application for renewal to the Department at least ninety days prior to the date of expiration.~~

252:650-1-7. Exclusionary siting criteria [REVOKED]

~~(a) **Groundwater resources and recharge areas.** No permit shall hereafter be granted for a liquid non-hazardous waste disposal facility proposed to be located over or through unconsolidated alluvium or terrace deposits, or over or through bedrock aquifers or their recharge areas as shown on the maps described as "Sheet 1 Unconsolidated alluvium and terrace deposits" and "Sheet 2 - Bedrock aquifers and recharge areas" of the "Maps showing principal ground water resources and recharge areas in Oklahoma", compiled by Kenneth S. Johnson, Oklahoma Geological Survey (1983). Existing disposal sites in these areas may continue to operate and may modify capacity and treatment and disposal methods.~~

~~(b) **Water wells.** No permit shall hereafter be granted for a liquid non-hazardous waste disposal facility proposed to be located within one-quarter mile of any public or private water supply well.~~

~~(c) **Flood plain.** No construction permit shall hereafter be granted for a liquid non-hazardous waste disposal site proposed to be located within a one-hundred year floodplain, unless diking or building of platforms will prevent inundation and erosion of the site and leaching of contaminants from the site.~~

~~(d) **Surface water.** No construction permit shall hereafter be granted for a liquid non-hazardous waste disposal site proposed to be located within one-half mile of the conservation pool elevation of any reservoir which supplies water for a public water supply or within one-half mile of any scenic river.~~

~~(e) **Injection wells.** No construction permit shall hereafter be granted for a liquid non-hazardous waste injection well proposed to be located in any area where it would have an adverse or unpredictable effect on any existing Class I, II, or III injection well, or any oil or gas well.~~

252:650-1-8. Sources of fresh water [REVOKED]

~~Injection of wastes into or above an underground source of freshwater is prohibited.~~

252:650-1-9. Incorporation by reference [REVOKED]

~~(a) **Code of Federal Regulations.** When reference is made to the Code of Federal Regulations, 40 CFR 124 et seq. and 144 et seq., it shall mean (unless otherwise specifically provided) Procedures for Decision-Making and the Underground Injection Control Program (respectively), Monday, May 19, 1980 as amended through July 1, 1987.~~

~~(b) **40 CFR incorporation.** The following parts of 40 CFR are, unless otherwise specified, incorporated by reference in their entirety as they apply to the Underground Injection Control Program:~~

~~(1) Part 124.3. Application for a permit.~~

~~(2) Part 124.6 (a), (b), (d), & (e). Draft permits.~~

~~(3) Part 124.8. Fact sheet.~~

~~(4) Part 124.10. Public notice of permit actions and public comment period.~~

~~(5) Part 124.11. Public comments and requests for public hearing.~~

~~(6) Part 124.12 (a), (c) and (d). Public hearings.~~

~~(7) Part 124.13. Obligation to raise issues and provide information during the public comment period.~~

~~(8) Part 124.14. Reopening of the public comment period.~~

~~(9) Part 124.17 (a) and (c). Response to comments.~~

~~(10) Part 144.5. Confidentiality of information.~~

~~(11) Part 144.32. Signatories to permit applications and reports.~~

~~(12) Part 144.51. Conditions applicable to all permits.~~

~~(13) Part 144.52. Establishing permit conditions.~~

~~(c) **Synonymous terms.** For purposes of interfacing with 40 CFR 124 and 144 et seq., the following terms apply:~~

~~(1) **Administrator** is synonymous with **Executive Director.**~~

~~(2) **Director** is synonymous with **Executive Director.**~~

~~(3) **Regional Administrator** is synonymous with **Executive Director.**~~

~~(4) **State** is synonymous with **Department.**~~

~~(5) **Public hearing** is synonymous with **public meeting.**~~

~~(d) **Citations incorporated by reference.** When a provision of the Code of Federal Regulations is incorporated by reference, all citations contained therein are also incorporated by reference. The definition of terms contained in 40 CFR 124.2 shall apply unless the term is defined in Subchapter 1 of this Chapter~~

~~(e) **Inconsistencies or duplications.** In the event that there are inconsistencies or duplications in the requirements of those provisions incorporated by reference from 40 CFR 124 et seq. and 144 et seq., and the rules in this Chapter, the provisions incorporated by reference from 40 CFR 124 et seq. and 144 et seq., shall prevail except where the rules in this Chapter are more stringent.~~

SUBCHAPTER 3. CLASS I INJECTION WELL STANDARDS FOR NON-HAZARDOUS WASTES [REVOKED]

252:650-3-1. Minimum specifications for all Class I injection wells [REVOKED]

~~(a) **Water and resource protection.** An injection well shall be completed, equipped and maintained in a manner that will not degrade or endanger fresh water, or damage sources of oil or gas, or endanger other natural resources.~~

~~(b) **Disposal technique.** Disposal of liquid non-hazardous waste shall be through adequate tubing and below a packer, which shall be strategically set to isolate the waste receiving formation.~~

~~(c) **Annular space fluids.** The annular space between injection tubing and production casing shall be filled with a non-corrosive fluid and connected to a closed pressure tank containing a reservoir of non-corrosive fluid. The pressure tank shall be equipped with sensors or measuring devices to enable monitoring of the fluid level in the tank. Unless otherwise specified by the Department, the annulus fluid shall be maintained at a minimum positive pressure of 10 pounds per square inch - gauge at the well head.~~

~~(d) **Twenty-four hour monitoring.** The injection pressure at the well head, the flow rate, the annulus pressure, and the temperature of the injected fluid shall be monitored and recorded continuously (twenty-four hours per day, seven days per week) on either a circular or strip chart recorder. If the specific gravity of the injected fluid varies typically from 1.0, then the specific gravity shall also be monitored and recorded continuously. The operator shall maintain records accurately reflecting the volume of fluid injected on any given day.~~

~~(e) **Monthly reports.** The operator of an injection well shall submit a monthly operations report. This report shall contain representative copies of the charts or records that reasonably reflect the injection and annulus pressures, the flow rate, temperature and, where appropriate, the specific gravity of the injected fluid which were encountered on any given day of the month. The operator shall maintain a permanent file of all charts and records obtained under this Subsection as a part of the permanent site records. Monitoring gauges and recorders shall be calibrated routinely and maintained in full operational condition so that they will accurately reflect the actual operating conditions of the injection well.~~

~~(f) **Monitoring taps.** Injection and annulus pressure monitoring taps shall be provided for the use of the Department. Such taps shall be connected near the locations on the well of the facility pressure monitoring recorders. The taps shall provide a one-fourth inch diameter National Pipe Thread female pipe fitting, valved and capped to prevent fluid loss when not in use. Said taps shall allow simultaneous pressure monitoring by facility pressure recorders and Department pressure gauges for comparison.~~

~~(g) **Injection fluid tests.** Injection fluids shall be analyzed with sufficient frequency, acceptable to the Department, to yield data representative of fluid characteristics. The physical, chemical, and other relevant characteristics of the injected fluids shall be submitted as part of the monthly reports required by 252:650-3-1(e) and shall remain a part of the permanent site records.~~

~~(h) **Maximum total pressure gradient.** The maximum total pressure gradient (applied injection pressure plus fluid pressure) in any injection well shall not exceed sixty-five percent of the established overburden pressure gradient, expressed in pounds per square inch per foot (psi/ft) of depth from ground surface to the top of the disposal zone. If the effective overburden pressure gradient is not established, the maximum total pressure gradient shall not exceed 0.65 psi/ft of depth from ground surface to the top of the disposal zone unless otherwise specified by the Department. The Department may adjust the permitted maximum injection pressure that can be applied at the well head to account for pressure loss due to friction in piping or tubing.~~

~~(i) **Tubing tests.** The tubing shall be tested at one hundred fifty percent of its maximum proposed operating pressure or 300 psi, whichever is greater, before operation of an injection well, and each five years thereafter. The operator of a non-hazardous injection well may request, one hundred eighty days prior to test date, the Department to approve equivalent alternative test procedures to insure mechanical integrity of the tubing.~~

~~(j) **Cement tests.** As a minimum requirement, the operator shall remove the tubing and packer from the well once each five years of operation and shall conduct tests (such as cement bond logs, temperature or noise logs, or tracer surveys) as necessary to insure the continued integrity of the cementing. The Department prefers that such tests be conducted no more than ninety days prior to submission of an application for permit or permit renewal, but the primary scheduling control shall be each five years of operation. The results of the most recent such tests shall be included with said application. The owner shall notify the Department at least seven days in advance of the time and date of such tests so that Department observers may be present. The operator of a non-hazardous injection well may request, one hundred eighty days prior to test date, the Department to approve equivalent alternative test procedures to insure mechanical integrity of the injection well.~~

~~(k) **Annulus tests.** The operator shall, upon notice by the Department, pressurize the annulus semi-annually to a minimum of 300 psi unless otherwise specified by the Department. The well shall be shut-in and the annulus pressure monitored by the Department for pressure loss or gain.~~

~~(l) **Pressure fall-off test.** A pressure falloff test shall be conducted semi-annually. The pressure fall-off test shall be conducted by stabilizing the well to its normal operating injection pressure and flow rate, and then shutting in the well and continuously recording the pressure falloff. The~~

~~pressure falloff test may be terminated when the well head pressure changes no more than 3 psi in one hour, or at the end of twenty-four hours, whichever occurs first. Results of the pressure falloff test shall be submitted to the Department with the monthly report following completion of the falloff test. The results shall include the continuous chart recordings of the injection flow rate before the test, and the injection pressure before and during the test.~~

~~(m) **Solids or sludges tests.** Any solid materials or sludges produced by or resulting from pre-treatment, filtering, or storage of fluids to be injected shall be tested to determine whether they are hazardous wastes. Any hazardous waste identified by this testing shall be disposed of in accordance with the Department's Hazardous Waste Management Rules, OAC 252:200.~~

252:650-3-2. Plugging and abandonment [REVOKED]

~~Any well to be permanently abandoned shall be immediately plugged. Every well shall be plugged in such a manner to permanently prevent the migration of any disposed substances out of the disposal zone, as well as the migration of oil, gas, or salt water into or out of any productive formations by means of the well bore. As a minimum, plugging and abandonment of a well shall include the following elements:~~

~~(1) The plugging operator shall notify the Department of the exact time during which all plugging operations will take place. The Department may be present at plugging operations.~~

~~(2) Plugging shall be by a series of continuous cement plugs from the total depth of the well to ground level.~~

~~(3) The top of any plugged well shall clearly show the well permit number and date of plugging by permanent markings on a steel plate welded to the top of the casing remaining in the well.~~

~~(4) Within fifteen days after a well has been plugged, the owner or operator shall file a plugging record in triplicate with the Department.~~

~~(5) The owner shall submit, at least one hundred eighty days prior to cessation of operations, plans for the proper disassembly, decontamination and restoration of the site. After the Department approves these plans, they shall be implemented and completed within six months, unless otherwise specified by the Department.~~

~~(6) The plans submitted under (5) of this subsection shall include the following:~~

~~(A) Methods for reconditioning, recycling, or disposal of all contaminated materials, residual liquids, sludges, soils, and ancillary equipment such as pumps, piping, tubing, and tanks.~~

~~(B) Plans for proper closure of all permitted pits, ponds, and lagoons.~~

~~(C) Plans for regrading the entire disposal site, including provisions for proper cover to prevent excessive runoff and erosion.~~

252:650-3-3. Permit requirements [REVOKED]

~~(a) **Application information.** The following shall be included in a permit application:~~

~~(1) The information required in 40 CFR 124.3.~~

~~(2) Plat certificates and any other records filed with the County Clerk or the Oklahoma Corporation Commission showing every oil, gas, water, irrigation or disposal well and every "dry hole" or other artificial penetration deeper than twenty-five feet within the area of review.~~

~~(3) Scale and schematic drawings of all proposed pre-treating and/or auxiliary surface equipment, including any backup, fail-safe or standby systems to be utilized in case of well failure.~~

~~(4) Schematic drawing illustrating in detail the proposed well construction including dimensions of well bore, casing, cementing, tubing and packer(s).~~

~~(5) Information on any proposed well testing programs such as any stimulation procedures, drill stem tests and/or injectivity testing.~~

~~(6) Narrative geologic, hydrologic, and engineering report on the proposed injection zone, including:~~

~~(A) Isopachous and structural maps of the injection zone.~~

~~(B) All available data from other wells in the area, including operational status and plugging records, as appropriate.~~

~~(C) A discussion of known or potential fluid flow directions and fluid distributions within the injection zone(s).~~

~~(7) Information regarding the physical integrity of all wells within the area of review that penetrate the injection formation.~~

~~(8) Two detailed stratigraphic cross sections showing all formations to be penetrated, both along the axis of the structure and normal to the axis. The cross sections shall cover an area large enough to depict both local and regional structure, shall show details of lithologies to be penetrated, and shall be referenced to the information required under 6 of this subsection.~~

~~(9) Information regarding potential adverse effects to any existing injection well. For the purpose of this Subsection, an existing injection well is defined to be an injection well either currently in operation, under construction, or one which has a complete application submitted to the Department for consideration. Should it be shown that such potential exists, the application shall be denied, except that the operator of the existing injection well may waive this requirement. To waive this requirement, the operator of an existing injection well shall indicate same to the Department in writing and shall certify the ability of his well to be operated in compliance with OAC 252:650.~~

~~(10) A complete plugging and abandonment plan constructed to accomplish the activities required in 252:650-3-2, including cost information for determining the amount of the surety bond required in 252:650-5-4. This plugging and abandonment plan shall be submitted in a form suitable for publication in a request for bid. Cost information shall be computed assuming that third~~

~~party contractors (not the Department or the permittee) will perform all work.~~

~~(b) **Potentially affected zone.** The potentially affected zone shall be determined by consideration of injection pressure, volumes and characteristics of fluids to be injected, years of operation, and geological characteristics and shall in all cases include at a minimum the area within a one mile radius of each proposed well.~~

~~(c) **Injection zone waste capacity.** The applicant shall demonstrate with geologic, hydrologic, and engineering data that the proposed injection zone is large enough and is sufficiently porous and permeable to allow injection of wastes at the proposed rate and volume.~~

~~(d) **Confining zone seal demonstration.** The applicant shall provide scientific data such as core permeability analyses, well logs, or other records to demonstrate that formations overlying the injection zone(s) will serve as seals to prevent movement of wastes from the injection zone(s) into sources of fresh water or into oil, gas, or other mineral resources. This demonstration shall assure that no pathways such as active faults or open fractures exist in the sealing formation(s) to allow injected wastes to migrate upward from the injection zone.~~

~~(e) **Final construction documentation.** The items noted below shall be submitted to the Department within thirty days of completion of an injection well constructed under a permit issued by the Department. The injection well shall not be operated, except for testing purposes, until the Department fully evaluates the information submitted hereunder and approves in writing operation of the well. The Department will subsequently modify the permit if necessary to reflect actual data and operational parameters determined by the construction of the well.~~

~~(1) Drawing of well (scaled vertically) showing:~~

~~(A) Total depth of well.~~

~~(B) Depth and relative thickness of formations and lithologies penetrated.~~

~~(C) Depth and construction of all casings.~~

~~(D) Depth of packer(s).~~

~~(E) Depth of top and bottom of all cemented areas, verified by a cement bond log.~~

~~(2) Geological/hydrological report on disposal zone:~~

~~(A) Depth to top and bottom of disposal zone.~~

~~(B) Porosity and permeability of disposal zone.~~

~~(C) Compatibility with the industrial wastes to be injected.~~

~~(D) Fluid pressure, temperature and fracture pressure of the disposal zone.~~

~~(E) Results of any preliminary flow tests and stimulation practices; such tests shall be conducted using either fresh water or the formation waters encountered.~~

~~(F) Discussion of direction and distribution of flow within the zone.~~

~~(G) Discussion of geologic anomalies, such as faults or caverns, which were not considered or anticipated by the permit application.~~

~~(3) Logs and Surveys including:~~

~~(A) An electrical resistivity or induction log of the type determined best for the condition of the hole being logged (the log shall have an self potential curve and a single or multiple resistivity curve).~~

~~(B) Driller's log.~~

~~(C) Mechanically recorded drilling time log (geolograph or similar).~~

~~(D) Temperature log.~~

~~(E) A porosity log which shall have an S.P. or gamma ray curve, and a bore hole caliper survey, which shall be accompanied by a micro resistivity, interval transit time, compensated density, neutron, or other curve developing similar information regarding porosity and potential faulting.~~

~~(F) Gamma ray/neutron log, if disposal zone is cased.~~

~~(G) Electromagnetic thickness log and caliper log of the in-place casing.~~

~~(H) Fracture finder log.~~

~~(I) Bottom hole pressure test made in hole and disposal zone.~~

~~(J) Noise logs.~~

~~(K) Mud logs.~~

~~(4) Detailed lithological description of all formations penetrated and all core data obtained.~~

~~(f) **Updating application for permit.** After completion of the well, all data submitted in the application for permit shall be updated to reflect the new data obtained during well construction.~~

252:650-3-4. Construction and operation standards [REVOKED]

~~(a) **Demonstration of water resource protection.** The applicant shall provide the Department with sufficient information to demonstrate that operation of the proposed injection well(s) will not contaminate any source of fresh water or the surface of the land or improvements thereon, or damage any sources of oil, gas or other natural resources.~~

~~(b) **Well materials compatibility.** Tubing, casing, cement and all other construction materials coming in contact with the waste fluid shall be resistant to the corrosive effects of the waste.~~

~~(c) **Surface casing.** The surface casing shall extend from the surface down to at least fifty feet below the lowest aquifer that contains fresh water.~~

~~(d) **Annular space cementing.** All annular spaces between casings and between the casings and the bore hole shall be filled with cement circulated from the bottom of the hole to ground surface, unless otherwise specified by the Department. Measures such as cleaning and sandblasting casing(s) prior to installation, rotation of casing(s) during cementing, and placement of excess cement to prevent void spaces and channels, shall be implemented to assure good bonding of the cement to the casing(s) and the borehole.~~

~~(e) **Monitoring well.** At least one monitoring well shall be installed and maintained at the expense of the owner. The Department may require additional wells if they are deemed necessary to adequately monitor groundwater quality and level~~

~~around the site. Specifications for the location, construction and maintenance of monitoring and/or observation holes must be approved by the Department prior to installation.~~

~~(1) Well(s) shall be sufficient to provide monitoring of the lowest fresh water aquifer beneath the site.~~

~~(2) Well(s) shall be arranged so that at least one well will be placed hydraulically down-gradient from the site.~~

~~(3) Unless otherwise specified by the Department, water samples shall be obtained and analyzed at least once each month and submitted as part of the monthly report.~~

~~(4) Upon issuance of permits, the Department will notify the operator of the parameters for which the samples shall be analyzed.~~

252:650-3-5. Dedication [REVOKED]

~~Upon permit approval, all facilities and equipment connected with the disposal operation as described in the permit application, whether on site or off, shall be dedicated to the sole described use. This requirement shall not be taken to include highway or rail transport vehicles used to convey liquid non-hazardous waste to the facility from off-site generators. Transfer, other use, or sale of this equipment is prohibited unless written approval is obtained from the Department. Such approval may be obtained only if the owner can show that said equipment is not contaminated and will not contaminate the environment in its future use, and that the absence of such equipment will not affect the operational safety of the site.~~

252:650-3-6. Life-time [REVOKED]

~~The owner shall submit a projected useful life for the injection well based upon that well's potentially affected zone, giving the facility's projected volume of injection, fluid type and all the geologic and hydrologic factors for that region.~~

~~(1) If the well is still in operation when the projected useful life ends, the owner must submit plans for immediate shut-down and follow abandonment and plugging procedures.~~

~~(2) If the well is operating effectively and within its permit limits at the end of the projected useful life, the owner may submit a revised life. This submittal should be received by the Department at least one hundred eighty days prior to the expiration of the previously projected date. The submittal shall include an explanation of the basis for the revision. An application for a revised well life-time expectancy shall require a permit modification.~~

SUBCHAPTER 5. PERMIT PROCEDURES [REVOKED]

252:650-5-1. Application procedure [REVOKED]

~~(a) **Information required.** An application for a permit or renewal shall, in addition to the application fee, include in triplicate:~~

~~(1) An application on a form supplied by the Department.~~

~~(2) Information addressing the restrictions set out in Subchapter 1 of OAC 252:650.~~

~~(3) For new permits, the supporting information required in Subchapter 3 of OAC 252:650 and in 40 CFR 122.4.~~

~~(4) For permit renewals, a summary of the operational history of the injection well(s) and information on any changes in construction or operation of the wells since the original application.~~

~~(b) **Public notification.** When the Department determines to issue a draft permit (and not a draft denial) upon an application, the applicant shall publish notice in accordance with the requirements of 252:650-5-3 offering forty-five days for the request of a public meeting upon the permit as described in the draft permit.~~

252:650-5-2. Modifications [REVOKED]

~~(a) **Minor modifications.** The Department may make minor modifications to a permit, either upon application by the permittee or on the Department's initiative. Minor modifications may only:~~

~~(1) Correct typographical errors.~~

~~(2) Accommodate minor changes to rules that do not substantively affect the facility.~~

~~(3) Allow for a change in ownership or operational control of a facility where the Department determines that no other substantive change in the permit is necessary.~~

~~(4) Allow for changes in quantities or types of fluids injected, where such changes are within the capacity of the facility as permitted and, in the judgment of the Department, would not interfere with the operation of the facility or its ability to meet the conditions of the permit and would not change its classification.~~

~~(5) Change minor elements of the construction of a facility's injection well(s) and ancillary equipment and units, where such a change does not substantively alter the capacity of the well system as permitted,and does not interfere with the operation of the facility or impair its ability to comply with the permit.~~

~~(6) Amend a plugging and abandonment plan that has been updated to reflect changes in costs or in rules.~~

~~(b) **Minor modification procedures.** Applications for minor modifications may be made by letter submitted to the Department, with all supporting documentation needed for the Department to evaluate the application. Public notice is not required for minor modifications.~~

~~(c) **Major modifications.** The Department may make major modifications to a permit, either upon application by the permittee or on the Department's initiative. Major modifications comprise substantial material alterations to a permitted facility, and may include, for example:~~

~~(1) Construction of additional injection well(s).~~

~~(2) Substantial deepening, plugging back, or enlargement or reduction of injection well(s).~~

~~(3) Reconstruction of the facility. Reconstruction occurs when the capital investment in the cumulative changes to the facility exceeds fifty percent of the capital cost of the original facility adjusted for inflation.~~

~~(d) **Major modification procedures.** Major modifications shall be subject to the application procedures and public notice procedures required for applications for new permits.~~

252:650-5-3. Public notice [REVOKED]

~~Public notice shall be made in accordance with forms and instructions provided by the Department and shall be made by one publication in each of two newspapers in the area of the proposed facility that meet the requirements of 25 O.S. 1991, §106. In addition, notice shall be made by two broadcasts, one during the hours 8:00 a.m. to 12:00 noon and one during the hours 6:00 p.m. to 10:00 p.m., via a radio station whose primary broadcast area covers the area of the proposed facility.~~

252:650-5-4. Bonding requirements [REVOKED]

~~(a) **Bond amount.** Persons applying for permits or permit renewals must provide a surety bond in an amount adequate to assure payment of the costs of plugging and abandoning the disposal well(s) and closing the disposal facility as required in 252:650-3-2.~~

~~(b) **Bond life.** Operators must maintain a surety bond in effect for the entire life of the injection well disposal facility until or unless the well(s) is (are) closed in accordance with a closure plan approved by the Department in accordance with this Chapter.~~

~~(c) **Bond coverage.** The surety bond must specifically cover costs of:~~

~~(1) Dismantling the well(s).~~

~~(2) Performing any logging or other testing that might be necessary to assure integrity of the cement behind the long string casing(s).~~

~~(3) Perforating casing and "squeezing" cement, if needed, to remedy poorly bonded intervals of cement.~~

~~(4) Cementing the well(s) in stages from bottom (total depth of the well(s)) to ground surface.~~

~~(5) Placement of identifying steel plate on the well head casing.~~

~~(6) Decontaminating and/or properly disposing of tubing, packers, piping, pumps, tanks, and other well equipment.~~

~~(7) Properly closing all permitted pits, ponds, and lagoons.~~

~~(8) Proper disposal of any contaminated sludges, soils, liquids, or other materials generated by the closure of the wells and associated units.~~

~~(9) Regrading and revegetating the disposal site.~~

~~(d) **Bond submission.** The surety bond shall be submitted, in a form acceptable to the Department, prior to final issue of any permit.~~

~~(e) **Bond cancellation.** Bonds may not be canceled by the operator or the operator's surety without express written approval of the Department.~~

SUBCHAPTER 7. MISCELLANEOUS [REVOKED]

252:650-7-1. Fees for services [REVOKED]

~~(a) **Fees payable.** Fees should be made payable to Solid Waste Management, Department of Environmental Quality, and application fees must accompany the application, or the application will not be deemed to have been submitted.~~

~~(b) **Monitoring and renewal fees.** Monitoring and renewal fees for permits are payable and must be postmarked no later than sixty days from the invoice date. Delinquent renewals subject the underlying permits and permit holders to administrative sanctions.~~

~~(c) **Fee amounts.** The following fees apply to this Chapter:~~

~~(1) Permit application - $2,000.~~

~~(2) Permit Renewal - $500.~~

~~(3) Facility monitoring - $250 per year.~~

~~(4) Fees will not be reassessed at time of transfer of ownership if units and EPA I.D. number remain unchanged.~~

~~(d) **Refunds.** Any permit application shall be entitled to a refund of 90% of the application fee if the Department receives notice of withdrawal within thirty days of submission of the application.~~

252:650-7-2. Incidents [REVOKED]

~~(a) **Spills, leakage, or discharges.** If an incident involving the spill, leakage, discharge to surface or groundwaters (outside the limits of a discharge permit), or other uncontrolled release of materials which are or become liquid non hazardous waste arises, the owner, operator, or other responsible person shall immediately notify the Department. Soils and other matter which may be contaminated with such materials, and which are to be disposed of but cannot be safely disposed of in sewage treatment works or sanitary landfills become either liquid non-hazardous waste or, if tested as hazardous, become hazardous waste.~~

~~(b) **Zoning.** OAC 252:650 shall not abrogate in any way the zoning authority of any duly constituted zoning agency with respect to the siting of any site or facility.~~

[OAR Docket #15-559; filed 6-15-15]

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

[OAR Docket #15-560]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. Introduction
252:656-1-2 [AMENDED]
252:656-1-3 [AMENDED]
Subchapter 3. Permit Procedures
252:656-3-4 [AMENDED]
252:656-3-5 [AMENDED]
252:656-3-10 [AMENDED]
Subchapter 11. Lagoon Standards
252:656-11-2 [AMENDED]

252:656-11-3 [AMENDED]
Subchapter 13. Preliminary Treatment Standards
252:656-13-2 [AMENDED]
Subchapter 21. Disinfection Standards
252:656-21-2 [AMENDED]
252:656-21-4 [NEW]
Subchapter 23. Supplemental Treatment Standards
252:656-23-4 [NEW]
Subchapter 27. Water Reuse
252:656-27-1 [AMENDED]
252:656-27-4 [AMENDED]
Appendix A. Design Tables [REVOKED]
Appendix A. Design Tables [NEW]

AUTHORITY:
Environmental Quality Board, 27A O.S. § 2-2-101; Water Quality Management Advisory Council, 27A O.S. § 2-2-201; and 27A O.S. §§ 1-3-101, 2-3-202, 2-3-402, 2-3-501, 2-6-103, 2-6-203, 2-6-402 and 2-6-501.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 7, 2014

COMMENT PERIOD:
December 1, 2014 to December 31, 2014

PUBLIC HEARING:
Before the Council on January 13, 2015, and before the Environmental Quality Board on February 20, 2015

ADOPTION:
February 20, 2015

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 27, 2015

APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 8, 2015

FINAL ADOPTION:
June 8, 2015

EFFECTIVE:
September 15, 2015

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
N/A

ANALYSIS:
The proposed regulations will: (1) add definitions for "25-year flood", "100-year flood", and "CT"; (2) clarify permit requirements regarding the use of reclaimed water within the wastewater treatment plant boundaries; (3) add Best Management Practices for Category 6 uses within a wastewater treatment plant to the minimum Operation and Maintenance Manual requirements; (4) clarify the requirements for surface evaporation lagoons (total retention lagoons); (5) remove requirements for backfill consistency and cover on lined dike slopes; (6) allow the use of top mounted self-priming suction lift pumps in grit chambers; (7) add standards for on-site generation of sodium hypochlorite; (8) add ozone disinfection standards; (9) add membrane filtration to supplemental treatment standards requirements; (10) reserve Category 1 as a future category of reclaimed water; (11) add permitted uses for Category 2 and Category 3 reclaimed water; (12) add Category 6 to the list of categories of reclaimed water; (13) add permitted uses for Category 6 reclaimed water; (14) clarify cautionary language requirements for reclaimed water use from hose bibs and yard hydrants; and (15) make other minor clarifications.

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

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2015:

SUBCHAPTER 1. INTRODUCTION

252:656-1-2. Definitions

In addition to terms defined in Title 27A of the Oklahoma Statutes, the following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:

"25-year flood" means a flood event that has a 4 percent chance of being equaled or exceeded in magnitude in any given year.

"100-year flood" means a flood event that has a 1 percent chance of being equaled or exceeded in magnitude in any given year.

"208 Plan" means an area wide wastewater treatment management plan that states are required to submit to EPA for approval pursuant to section 208 of the Clean Water Act, 33 U.S.C. § 1288.

"ASTM" means the American Standard Testing Method and Material.

"Biosolids" means organically treated wastewater materials from municipal wastewater treatment plants that are suitable for recycling as a soil amendment. This term is within the meaning of "sludge" as defined in 27A O.S. § 2-6-101(11). Biosolids are divided into the following classes:

(A) Class A Biosolids meets the pathogen reduction requirements of 40 CFR § 503.32 (a);

(B) Class B Biosolids meets the pathogen reduction requirements of 40 CFR § 503.32 (b).

"BOD" means total 5-day biochemical oxygen demand.

"Bypass" means the intentional or unintentional diversion of a waste stream from any portion of a wastewater treatment system.

"CBOD" means 5-day carbonaceous biochemical oxygen demand.

"Cell" means an individual basin of a lagoon system.

"cfm" means cubic feet per minute.

"Collection system" means pipelines or conduits, pumping stations, force mains and all other facilities used to collect or conduct wastewater to a treatment works.

"CT" means the product of residual disinfectant concentration, (C) in (mg/l), and the corresponding disinfectant contact time (T) in minutes, i.e., C x T. CT requirements for a variety of disinfectants and conditions are in the EPA Guidance Manual to the Surface Water Treatment Rule.

"DEQ" means the Oklahoma Department of Environmental Quality.

"Discharge point" means the point at which wastewater enters Waters of the State or become Waters of the State.

"Domestic wastewater" means wastewater from drinking fountains, showers, toilets, lavatories and kitchens.

"End-of-pipe" means the terminal points in all reclaimed water users'distribution systems.

"Engineer" means a person licensed to practice engineering in Oklahoma.

"fps" means feet per second.

"Freeboard" means the vertical distance from the surface water level to the overflow elevation in a treatment unit.

"GPM" means gallons per minute.

"Land application" means the controlled application of treated wastewater onto the land surface for beneficial use.

"MGD" or "mgd" means million gallons per day.

"MLSS" means mixed liquor suspended solids.

"MLVSS" means mixed liquor volatile suspended solids.

"New technology" means any method, process or equipment which is used to treat or convey sewage which is not addressed in this Chapter. This does not refer to innovative technology as defined by 40 CFR Part 35.

"NPDES" means the National Pollution Discharge Elimination System.

"OAC" means Oklahoma Administrative Code.

"OSHA" means the Occupational Health and Safety Administration.

"Open storage basin" means an uncovered basin, below or above ground level, that is designed, maintained and operated to store Category 2 or 3 reclaimed water.

"Person" means any individual, company, corporation, government agency, municipality, or any other entity.

"Population equivalent" and **"PE"** mean the calculated population which would normally contribute the same amount of biochemical oxygen demand (BOD) per day of wastewater. It is computed on the basis of 0.17 lb. of 5-day BOD per capita per day.

"PSRP" means process to significantly reduce pathogens.

"PVC" means polyvinyl chloride.

"Reclaimed water" means wastewater that has gone through various treatment processes to meet specific water quality criteria with the intent of being used in a beneficial manner.

"Retention time" means the theoretical time required to displace the contents of a tank or treatment unit at a given rate of flow (volume divided by rate of flow).

"Riprap" means a permanent, erosion resistant ground cover that consists of hard, sound durable stones that average in weight between thirty to fifty pounds (30-50 lbs), with no more than twenty percent (20%) weighing less than twenty pounds (20 lbs).

"Service line" means a wastewater line that connects an individual home, building or business to a permitted collection system.

"Total Kjeldahl nitrogen (TKN)" means the total of the organic and ammonia nitrogen.

"Treatment works" means any plant, disposal field, lagoon, incinerator or other facility used to treat, stabilize, hold or reclaim non-industrial wastewater.

"UL" means Underwriters Laboratories Inc.

"U.S.C." means United States Code.

"Variation" means change from the adopted or current standards for equipment, material or process.

"Wastewater system" means a collection system and treatment works.

"Water reuse system" means a treatment and distribution system designed to treat and supply reclaimed water.

252:656-1-3. Permit requirements

(a) **Permit to construct.** No one shall construct, modify or put into operation a wastewater system or a water reuse system without first obtaining a permit to construct from DEQ. Permits to construct will not be issued for new Category 4 restricted golf course irrigation systems pending further research and evaluation of performance data collected from existing systems.

(b) **Permit to supply.** No one shall supply reclaimed water without first obtaining a permit to supply from DEQ, except when using reclaimed water within the wastewater treatment plant boundaries pursuant to Category 6.

SUBCHAPTER 3. PERMIT PROCEDURES

252:656-3-4. Engineering report

(a) Applicants shall submit to DEQ two (2) copies of the engineering report for proposed new construction or modifications to sewage collection systems, or treatment works at least thirty (30) days prior to the submittal of plans and specifications. Applicants shall also submit a letter in which the applicant endorses the contents of each engineering report submitted to DEQ. For line extension and lift station construction, the submission of an Engineering Report Form, developed by DEQ, signed and sealed by an engineer licensed by the State of Oklahoma, may be submitted to meet the requirements of the necessary engineering report, unless a full engineering report is required by DEQ. Engineering reports shall include:

(1) **Volume and strength of sewage flow.** Establish the existing and anticipated design average and design peak flows and waste load for the existing and ultimate conditions. Include the basis for projecting initial current and/or future dry and wet weather flows and waste load for the existing, or initial, service area, and the anticipated future service area. For discharging facilities, the report must demonstrate that the proposed project complies with the design flow in the 208 Plan and other applicable OPDES permit limits.

(2) **Existing system.** Describe the existing system, including the need~~s~~ for the project related to health and safety, system operations and maintenance, and population growth. Issues that must be addressed include, but are not limited to, suitability of existing facilities for continued use, adequacy of water supply, history of compliance with state and federal requirements, and comparison of existing treatment units with state and federal design requirements.

(3) **Project description and alternatives.** The report must contain a description of the alternatives that were considered to meet the identified need. Provide a service area and project site maps showing the existing and proposed systems. The information must describe legal and natural boundaries, major obstacles, elevations, and any other information necessary to properly evaluate the project. Describe the proposed project and, where two or more solutions exist, discuss the alternatives including cost analysis and discuss the reasons for selecting the one recommended. For each alternative considered, the report must provide the following:

(A) **Description.** A description of the collection system, pumping systems, treatment, and discharge

facilities associated with each alternative as applicable.

(B) **Design criteria.** The design parameters used for evaluation purposes.

(C) **Schematic.** A schematic diagram(s) of all existing and proposed treatment processes.

(D) **Land requirements.** The identification of sites and easements that will be used and whether the sites:

(i) are currently owned or leased by the applicant, or

(ii) will be acquired or leased by the applicant.

(E) **Construction problems.** A discussion of concerns such as subsurface rock, high water table, limited access, or other conditions that may affect the cost of construction or the operation of the facility.

(F) **Advantages and disadvantages.** A description of the ability of each alternative to meet the owner's needs, address violations cited in any enforcement orders, satisfy public and environmental concerns, and comply with regulatory requirements. The report must demonstrate the compatibility of each alternative with existing, comprehensive, and area-wide development plans. Provide a short description of environmental impacts that may preclude any alternatives.

(G) **Selected alternative.** A complete description of the proposed project based on the general description presented in the evaluation of alternatives. The report must show that the proposed project will comply with all the requirements of this Chapter. At a minimum, the following information must be included:

(i) **Treatment.** A description of the processes, including biosolids management, in detail and the identification of the location of the plant and the site of any discharges; a status of compliance with the 208 Plan, and if applicable, include current revisions with copy of DEQ approval letter, if approved in the current 208 Plan.

(ii) **Pumping stations.** The size, type, location and any special power requirements, including provisions for emergency operations, of all pumping stations.

(iii) **Collection system layout.** Identify general location of line improvements, including: lengths, sizes and key components.

(iv) **Calculations.** Provide supporting calculations in sufficient detail to demonstrate compliance with DEQ design requirements to assure adequate capacity for the collection and treatment system as a whole to transport and treat the wastewater or reclaimed water. For collection system projects, the submittal must include a map with a list of manholes and pipes and the associated characteristics, such as elevation of inverts, pipe diameter, pipe segment length, and other information necessary to evaluate the project. The report must provide assurance that the receiving collection and treatment systems have adequate capacity.

(4) **Construction sequence.** A description of the sequence of construction and steps needed to maintain compliance during construction. If the project is not to be completed in one sequence, then provide details of the phases.

(5) **Site.** Describe the topography, soils, geologic conditions, depth to bedrock, groundwater level, floodway or floodplain considerations, and other pertinent site information. The project must be constructed on the site consistent with approved plans. Include 6 months of data on the groundwater level. Provide soil boring information pursuant to OAC 252:656-11-3 (a) for projects that include lagoons or other non-industrial impoundments.

(6) **Water supply.** Identify surface water intakes within five (5) miles of the discharge and known public and private water wells within three hundred feet (300').

(7) **Receiving stream.** Identify the receiving stream and its wasteload requirements according to the Water Quality sections of OAC 252:606 and Oklahoma's Water Quality Management Plan (208 Plan).

(8) **Disposition of biosolids.** Discuss the available alternatives for biosolids reuse and/or disposal (OAC 252:606 and OAC 252:515). Submit a sludge management or sludge disposition plan to DEQ for approval. All biosolids that will be land applied and/or disposed in a landfill must comply, at a minimum, with the Class B pathogen reduction requirements contained at 40 CFR, Part 503, adopted by reference at OAC 252:606.

(9) **Industrial wastes.** Discuss the characteristics and volume of anticipated industrial wastes.

(10) **Collection system.** Describe the area to be served by existing and proposed sewers. Sewer capacities must be designed for the estimated ultimate population that will be served. Similarly, consideration must be given to the maximum anticipated loadings from institutions, industrial parks and other similarly situated facilities.

(11) **Financing.** Provide itemized cost estimates to build, operate and maintain the proposed project including, but not limited to:

(A) development, construction, land and rights-of-way, legal services, engineering services, contingencies, refinancing, and any other factors associated with the proposed project;

(B) discuss financing methods;

(C) provide information regarding rate structures, annual operating and maintenance (O&M) cost, tabulation of users by monthly usage categories and revenue received for the last three fiscal years; and

(D) give status of existing debts and required reserve accounts. Include a schedule of short-lived assets and a recommended annual reserve deposit to fund replacement of short-lived assets such as pumps, paint and small equipment.

(12) **Enforcement orders.** Discuss all applicable enforcement orders, including the violations cited in the orders and how the project will eliminate said violations.

(13) **Conclusions and Recommendations.** Provide any additional findings and recommendations that must be considered in development of the project. This must include:

(A) recommendations for a specific course of action to be undertaken~~,~~;

(B) any special studies to be developed~~,~~;

(C) highlight the need for special coordination, include a recommended plan of action to expedite project development, etc.

(14) **Project Schedule.** The report must propose a schedule to:

(A) obtain funds to complete the proposed project~~,~~;

(B) submit construction plans, specifications, and permit application(s)~~,~~;

(C) start construction~~,~~;

(D) complete construction~~,~~; and

(E) attain compliance with applicable OPDES discharge permits.

(b) **Water reuse treatment and reclaimed water distribution systems.** Applicants shall submit to DEQ two (2) copies of the engineering report for proposed new construction or modifications to water reuse treatment and reclaimed water distribution systems. Engineering reports shall be submitted at least thirty (30) days prior to the submission of plans and specifications and all engineering reports submitted to DEQ shall be signed and sealed by an engineer licensed by the State of Oklahoma. Applicants shall also submit a letter in which the applicant endorses the contents of each engineering report submitted to DEQ. For line extension and lift station construction, the submission of an Engineering Report Form, developed by DEQ, signed and sealed by an engineer licensed by the State of Oklahoma, may be submitted to meet the requirements of the necessary engineering report, unless a full engineering report is required by DEQ. Engineering reports shall include the following, as applicable:

(1) **Volume and quality of reclaimed water flow.** Describe anticipated flow from wastewater treatment works to the water reuse treatment facility. For discharging facilities, the report must demonstrate how the proposed project impacts the design flow in the 208 Plan and other applicable OPDES permit limits.

(2) **Existing system.** Describe existing wastewater treatment and water reuse systems. Descriptions shall include: the suitability of existing facilities for continued use, adequacy of water supply and the facility's history of compliance with state and federal requirements.

(3) **Project description.** Provide service area and project site maps showing the existing and proposed systems. The information shall describe legal and natural boundaries, elevations, major obstacles and any other information necessary to properly evaluate the project. Project descriptions shall include the following:

(A) **Description.** A description of the wastewater treatment system preceding the water reuse treatment facility.

(B) **Design criteria.** The design parameters used for evaluation purposes.

(C) **Schematic.** Schematic diagrams of all existing and proposed treatment processes.

(D) **Land requirements.** Identification of the sites and easements that will be used and whether the sites:

(i) are currently owned or leased by the applicant, or

(ii) will be acquired or leased by the applicant.

(E) **Treatment.** A detailed description of the treatment processes, including biosolids management, identification of the location of the plant and the site of any discharges:

(i) **Pumping stations.** Identify the size, type, location, any special power requirements and provisions for emergency operations of all pumping stations.

(ii) **Reclaimed water distribution system layout.** Identify the general locations of line improvements, including lengths, sizes and key components.

(iii) **Calculations.** Provide supporting calculations in sufficient detail to demonstrate compliance with DEQ design requirements.

(4) **Construction sequence.** A description of the sequence of construction and steps needed to maintain compliance during construction. If the project is not to be completed in one sequence, then provide details of the phases.

(5) **Site.** Describe the topography, soils, geologic conditions, depth to bedrock, groundwater level, floodway or floodplain considerations, and other pertinent site information. The project must be constructed on the site consistent with approved plans. Include 6 months of data on the groundwater level. Provide soil boring information pursuant to OAC 252:656-11-3 (a) for projects that include lagoons or other non-industrial impoundments.

(6) **Biosolids handling.** If the proposed project will increase the production of biosolids and/or residuals, provide a description of any modifications necessary to properly treat and dispose of biosolids. All biosolids that will be land applied and/or disposed in a landfill must comply, at a minimum, with the Class B pathogen reduction requirements contained at 40 CFR, Part 503, adopted by reference at OAC 252:606. Submit a sludge management or sludge disposition plan as appropriate to the DEQ for approval.

(7) **Reclaimed water distribution system.** A description of the following:

(A) The location, size, and direction of flow of all existing and proposed reclaimed water distribution lines from the point of connection with the existing or proposed treatment works or storage locations to the end user.

(B) A summary of quantities that includes, at a minimum, pipe size, materials and linear feet of piping, types of testing and number and size of pumps.

(C) The disinfection system design based on one of the following criteria:

(i) maintaining a chlorine residual to end-of-pipe pursuant to Appendix A of OAC 252:627; or

(ii) a DEQ approved calibrated model of chlorine decay rate in the distribution system to demonstrate that adequate chlorine residual will be maintained to prevent slime growth and regrowth of pathogens to end-of-pipe.

(8) **Financing.** Itemized cost estimates to build, operate and maintain the proposed project including, but not limited to:

(A) development, construction, land and rights-of-way, legal services, engineering services, contingencies, refinancing, and any other factors associated with the proposed project;

(B) financing methods;

(C) information regarding rate structures, annual operating and maintenance (O&M) cost, tabulation of users by monthly usage categories and revenue received for the last three fiscal years; and

(D) the status of existing debts and required reserve accounts. Include a schedule of short-lived assets and a recommended annual reserve deposit to fund replacement of short-lived assets such as pumps, paint and small equipment.

(9) **Enforcement orders.** A discussion of all enforcement orders, identifying the violations cited in orders and explaining how the project will eliminate those violations.

(10) **Conclusions and Recommendations.** All engineering reports shall include a recommendation for a specific course of action to be undertaken~~,~~. The conclusions and recommendations shall also include any additional findings, identify any special studies to be developed, and any other recommendations that must be considered in development of the project.

(11) **Project Schedule.** A proposed schedule to:

(A) obtain funds to complete the proposed project~~,~~;

(B) submit construction plans, specifications, and permit application(s)~~,~~;

(C) start construction~~,~~;

(D) complete construction~~,~~; and

(E) attain compliance with applicable OPDES discharge permits.

252:656-3-5. Plans and specifications

(a) **General plans.** Applicants shall submit to DEQ two (2) copies of general plans that include the following:

(1) **Plan view.** Include a plan view of the plant and any discharge points, using at least 10-foot contours.

(2) **Flood elevations.** Show both the 25-year and 100-year flood elevations and their boundaries.

(3) **Existing and proposed treatment works.** Show the physical arrangement of all treatment units on a project site plat.

(4) **Existing collection systems.** Show the location, size and direction of flow of all existing sanitary sewers at the point of connection with proposed new sanitary sewers. Show the elevations of all sewer inverts close to the manholes.

(5) **Proposed collection systems.** Show the location of all proposed sewers, sewer easements and direction of flow. Number all manholes on the layout and correspondingly on the profile. Provide a summary of quantities that includes, at a minimum, linear feet of trenching, number of manholes, size, materials and linear feet of piping, types of testing and number and size of pumps (if applicable).

(6) **Existing and proposed reclaimed water distribution systems.** Show the location, size, and direction of flow of all existing and proposed reclaimed water distribution lines from the point of connection with the existing or proposed treatment works or storage locations to the end user. Provide a summary of quantities for proposed reclaimed water distribution lines that includes, at a minimum, pipe size, materials and linear feet of piping, types of testing and the number and size of pumps. Testing specifications shall include requirements for flushing mains to remove any construction debris before placing the system into service. Construction of reclaimed water distribution systems shall be in accordance with OAC 252:626-19-2, except as follows:

(A) locate reclaimed waterlines at least 5 feet horizontally from any existing or proposed potable waterlines;

(B) locate reclaimed waterlines at least 5 feet horizontally from any existing or proposed sewer lines;

(C) locate reclaimed waterlines crossing any existing or proposed potable waterlines at least 2 feet vertically below the potable waterlines; and

(D) locate reclaimed waterlines crossing any existing or proposed sewer lines at least 2 feet vertically above the sewer lines.

(7) **Drawings.** Show the name of the municipality, sewer district, or institution; scale in feet; north point; date; and name, telephone number, address, signature of engineer and/or imprint of engineer's seal on the drawings. In the case of bound documents, engineers must affix their seal, signature and date to the cover sheet or index page, which identifies all documents bound together for which the registrant has responsible charge. In the absence of a cover sheet or index page each sheet must have the seal, and dated signature of the registrant who has responsible charge. For bound documents involving multiple registrants, either each document in the bound set must be sealed, signed and dated by the registrant in responsible charge for that portion of the work, or the cover sheet or index page must be sealed, signed and dated by each registrant with a breakdown of responsibility for each document clearly identified. Draw general plans to a scale of 100 feet per inch. Establish and reference a permanent benchmark. The minimum plan size must be 11" x 17", one-sided and of adequate contrast sufficient for electronic imaging and storage.

(b) **Detailed plans.** The applicant shall submit to DEQ two (2) copies of detailed plans drawn to a suitable scale. Plans

to modify or extend existing wastewater treatment systems or water reuse systems shall clearly indicate the changes.

(1) **Non-industrial wastewater systems.** Detailed plans for non-industrial wastewater systems shall include the following:

(A) **Sewer plan and profile.** Include a plan and profile of all sewers to be constructed showing all special features, such as inverted siphons, extra strength pipe, concrete encasements, outfall structures and sewer bridges. Show all stream crossings on the profile with stream bed elevations, normal flow elevation and extreme high and low water levels. Scale the profiles to not more than 100 feet per inch horizontal and 10 feet per inch vertical. Show the scale on the profiles. Show all known existing structures both above and below ground that might interfere with the proposed construction; including water mains, gas mains, storm drains, and nature of street surfacing. Show wyes on the plan view and dimensions from the nearest down-stream manhole recorded on maps.

(B) **Sewer details.** Include profiles showing manhole stationing, size of sewers, top of rim and sewer invert elevations at each manhole and the grade and length of sewers between adjacent manholes. Show ground elevations at the house line or at approximately 50 to 75 feet from the centerline of the sewer in each direction except in the case of out-fall and/or relief sewers, where no wyes for house connections are needed.

(C) **Sewer appurtenances.** Include the details of all ordinary sewer appurtenances such as manholes, drop manholes, inverted siphons and pumping stations. A sufficiently detailed drawing of each structure must show dimensions, equipment, elevations, capacities, and any explanatory notes necessary to make them easily interpreted.

(D) **Sewer cross sections.** Include cross sections for manholes, outfall structures, headwalls, pipe cradling and encasement, and similar structures.

(E) **Sewage pumping station details.** Include complete construction details showing number and size of pumps, isolation valves, check valves, alarm system and emergency operation provisions.

(F) **Treatment works hydraulic profile.** Show hydraulic profiles with sewage, supernatant liquor and sludge flow through the plant.

(G) **Schematic diagrams.** Label schematic piping diagrams with all lines, appurtenances and direction of flow.

(H) **Treatment units.** Provide complete construction details of all treatment units including high and low water levels of receiving stream.

(I) **Fillets.** Eliminate dead spots in all tanks by designing fillets and otherwise rounding edges.

(2) **Water reuse systems.** Detailed plans for water reuse systems shall include the following information:

(A) **Treatment works hydraulic profile.** Show hydraulic profiles with sewage, supernatant liquor and sludge flow through the system.

(B) **Schematic diagrams.** Label schematic piping diagrams with all lines, appurtenances and direction of flow.

(C) **Treatment units.** Provide complete construction details of all treatment units including high and low water levels of receiving stream.

(D) **Distribution system.** Provide complete construction details of the distribution system, which shall be designed in compliance with Subchapter 27.

(c) **Specifications.** Applicants shall submit to DEQ complete detailed specifications for the proposed project with the plans and shall include a detailed summary of equipment and design data, with references to the specific applicable standards (e.g., ASTM, UL, etc.) for construction, installation and testing of said equipment.

(d) **Construction materials.** Applicants are responsible for complying with any occupational, safety and building codes. Reference in the plans or specifications where these codes require special construction materials, such as the National Electrical Code requirement for explosion-proof wiring where gases may accumulate. The DEQ will not, however, determine whether the proposed construction will meet such codes.

(e) **Redundant equipment.** Provide ~~a backup for all~~redundant treatment units and ~~pumping~~ equipment ~~to provide~~ for ~~equipment~~ maintenance and repair.

(f) **Maintenance and cleaning.** For maintenance and operational controls, all units must be equipped with means for cleaning. Direct discharge of untreated sewage is prohibited.

(g) **Weather protection.** Protect the structures and all electrical and mechanical equipment and controls from elements and a 100-year flood. Protect mechanical units, pumps, valves and piping from freezing.

(h) **Construction sequence.** Include a program for keeping existing wastewater facilities in compliance with all applicable water quality permit conditions during construction of additional facilities in accordance with OAC 252:656-3-4(a)(4) and/or OAC 252:656-3-4(b)(4).

252:656-3-10. Operation and Maintenance (O & M) Manual

Within ninety (90) days of the completion of the construction, the applicant must submit to the DEQ an O & M Manual for the operation and maintenance of the wastewater treatment system or the water reuse system. The O & M Manual must include at a minimum:

(1) System Treatment Requirements;

(2) Current NPDES Permit wasteload requirements to water quality sections of OAC 252:606 including 208 Plan requirements;

(3) Description, Operation and Control of the Treatment Works;

(4) Control of Unit Processes;

(5) Laboratory Testing;

(6) Common Operating Problems;

(7) Start-Up Testing and Procedures;

(8) Normal Operating Procedures;
(9) Alternative and Emergency Operations;
(10) Emergency Shutdown Operations and Emergency Response;
(11) Records Control and Retention;
(12) Safety;
(13) Wastewater Treatment System Maintenance Requirements and/or Water Reuse System Maintenance Requirements;
(14) Spare Parts and Chemical Inventory~~; and~~
(15) Reclaimed water storage and distribution system flushing plan to prevent slime growth, regrowth of pathogens and water age~~.~~;and
(16) Best Management Practices for Category 6 uses within a wastewater treatment plant.

SUBCHAPTER 11. LAGOON STANDARDS

252:656-11-2. Basis of design

(a) **Facultative Lagoons.** Facultative lagoons depend on the relationship between organic loading and surface area (algal photosynthesis) or on surface area and supplemental mechanical aeration to provide an aerobic layer of water at the surface. Facultative lagoons may be either total retention or flow-through (discharge) to waters of the state.

(b) **Flow-through lagoons.**

(1) **Organic loading.** Limit the organic load to 35 pounds BOD per acre (water surface area) per day for any cell depending solely on algal photosynthesis for oxygen. The total water surface area requirement based on organic loading is calculated at the average water depth. Flow-through lagoon systems will not consistently provide ammonia removal through the nitrification process so the effluent from these facilities may be toxic to aquatic life and thus cause whole effluent toxicity test failures.

(2) **Flow Control.** Provide at least two primary cells on new systems. Design the primary cells so they may be operated in either series or in parallel, with at least 60 days retention time. Provide at least two secondary cells operating in series with the primary cells and in series with each other. Provide a bypass line around any secondary cell in a series to the next cell. The secondary cells shall have at least 60 days detention for a total of at least 120 days detention in the system.

(3) **Depth.** The maximum water depth shall not exceed 6 feet in primary cells and 10 feet in secondary cells. Provide structures to allow the primary cells to operate between four foot depth and the maximum design depth plus three feet of freeboard. The operating depth for a flow-through lagoon shall be between 4 and 6 feet.

(c) **~~Surface evaporation lagoons (total retention)~~Total Retention**. ~~Where more than one acre of surface area is needed, provide at least two cells.~~ Size the primary cell(s) for the expected organic loading and additional evaporation cells designed for the hydraulic load. Base the design of all cells receiving raw wastewater on an organic loading of 35 lbs BOD per surface acre per day at the average operating depth. Design the primary cells so they may be operated in either series or in parallel.~~Provide sufficient area to evaporate the annual influent flow based on the average daily design flow with allowances for infiltration and inflow to the sewage collection system. Base the evaporation rates on the annual average pan evaporation minus the 90th percentile annual precipitation for the geographical location, as contained in Appendix E.~~

(1) **Surface evaporation.** Where more than one acre of surface area is needed, provide at least two cells. For those systems greater than five (5) acres surface area provide at least two primary cells.

(A) Provide sufficient area to evaporate the annual influent flow based on the average daily design flow with allowances for infiltration and inflow to the sewage collection system.

(B) Base the evaporation rates on the annual average pan evaporation minus the 90th percentile annual precipitation for the geographical location, as contained in Appendix E.

(C) The system shall be designed with a five (5) foot operating depth, with three (3) feet of freeboard.

(2) **Land Application.** Design two (2) primary cells and one storage cell. Follow design guidelines stated in Subchapter 25 of this Chapter.

(A) Primary cells shall have sixty (60) days of retention time.

(B) Secondary cells shall have ninety (90) days of storage with the operating depth not to exceed ten (10) feet.

(d) **Aerated lagoon systems.** The following apply to all new aerated lagoon systems. Only partial-mix systems will be considered for systems with 30 day average concentration limits for BOD and TSS of 30 mg/l and 90 mg/l, respectively, as their basic permit requirement. Aerated lagoon systems will not consistently provide ammonia removal through the nitrification process so the effluent from these facilities may be toxic to aquatic life and thus cause whole effluent toxicity test failures.

(1) **Number of cells.** At least two aerated cells, in series, followed by one settling lagoon and provide a hydraulic retention time of at least two days.

(2) **Depth.** The design water depth shall be 10 to 15 feet.

(3) **Design Requirements.** Submit design calculations to the DEQ for review, and justify the use of any constants not listed.

(4) **Aeration requirements.** Oxygen requirements will depend on organic loading, required treatment, and concentration of suspended solids to be maintained in the aerated cells. Aeration equipment shall be capable of maintaining a minimum dissolved oxygen level of 2 mg/l in the lagoons at all times. In the absence of experimentally determined values, the design oxygen requirements shall be 1.8 lb O_2/lb BOD applied at maximum loading.

(5) **Additional information.** For a more detailed discussion of aerated lagoon design see *Design Manual Municipal Wastewater Stabilization Ponds*, U.S. Environmental Protection Agency, EPA-625/1-83-015 (1983).

Also use *Wastewater Engineering: Treatment, Disposal & Reuse*, Metcalf & Eddy, Inc., 4th Edition, (2003).

(6) **Disinfection.** Disinfection shall be required for all lagoon systems proposed to discharge to "waters of the state" where the beneficial use of the receiving water body is designated in Oklahoma's Water Quality Standards (OAC 785:45) as either "Primary Body Contact Recreational" or "Public or Private Water Supply".

252:656-11-3. Lagoon construction details

(a) **Soil borings.** Provide soil boring data conducted by an independent soil-testing laboratory. Borings shall extend at least 5 feet below the proposed lagoon bottom and at least one boring shall be at least 25 feet deep or into bedrock. Borings shall be conducted during the time of highest groundwater level. Provide enough borings to accurately represent the soil characteristics of the entire lagoon site. If bedrock is encountered, describe its general characteristics and identification, and the corresponding geological formation(s). Include a map showing the location of each boring, a log of soil types encountered at each boring, the elevation of the water table where encountered and the permeability of soil samples taken from the same elevation as the proposed lagoon bottom. Fill and seal all borings after testing.

(b) **Dikes.**

(1) **Material.** Construct dikes of relatively impervious material and compact them to at least 90% Standard Proctor Density to form a stable structure. Remove vegetation and other unsuitable materials before construction.

(2) **Top width.** The top of the dike shall be at least 8 feet wide for maintenance vehicles.

(3) **Slope.** Inner and outer dike slopes shall not be steeper than 1 vertical to 3 horizontal (1:3). Steeper slopes will only be considered where surface construction is of soil cement or other material that will prohibit vegetation growth. Inner dikes shall not be flatter than 1 vertical to 4 horizontal (1:4).

(4) **Freeboard.** Design the lagoon to maintain at least 3 feet of freeboard above the design maximum water depth at all times.

(5) **Lagoon shape.** Round, square or rectangular lagoons with rounded corners, with a length not more than three times the width constructed without islands, peninsulas or coves.

(6) **Erosion control.** Protect inner dikes from wave action and outer dikes from runoff and floodwaters.

(A) **Seeding.** Where riprap is not used, apply at least 4 inches of fertile top soil to dikes to establish an adequate vegetative cover. Before prefilling, establish vegetation on dikes from the outside toe to 2 feet above the lagoon bottom on the interior as measured on the slope. Specify perennial, low-growing grasses that spread rapidly. Do not use alfalfa or other long-rooted vegetation for seeding since the roots of this type are apt to impair the water holding efficiency of the dikes.

(B) **Additional protection.** Provide extra protection where inner dikes may be subjected to severe wind action, such as lagoons larger than 5 acres and where the lagoon surface will often be exposed to strong winds. Also, protect areas of turbulence in aerated cells and all pipe penetrations. Install riprap, soil cement or other recognized material. Protect the inner dikes from 1 foot vertically above the high water elevation to 2 feet vertically below the minimum operating elevation. Place riprap on a filter bed at least 6 inches thick, and use material that will stay in place and resist erosion.

(c) **Lagoon seal.** ~~The seepage rate through the lagoon bottom and inside dike shall not exceed 500 gal/day/acre (5.4 x 10^{-7} cm/s) at a hydraulic head of 6 feet for soil and bentonite seal. Synthetic seals shall have no measurable leakage.~~ Construct a soil seal as specified below. If native soils exceed this seepage rate, then a bentonite seal or synthetic liner shall be specified. ~~Written certification to the effect that the seal was provided and applied in accordance with specifications and that the hydraulic conductivity is equal to or less than 5.4 x 10^{-7} cm/s shall be furnished by the project engineer.~~ Use ASTM Method 5084. Analysis of soil shall include how soil will be applied. The seepage rate through the lagoon bottom and inside dike shall not exceed 500 gal/day/acre (5.4 x 10^{-7} cm/s) at a hydraulic head of 6 feet for soil and bentonite seal. Synthetic seals shall have no measurable leakage.

(1) **Soil seal.**

(A) The soil used for sealing shall have a high, uniform content of fine material (clay and silt). Soil containing rock or a high gravel content is not acceptable for a soil seal or for mixing with bentonite.

(B) Soil used to construct the lagoon seal and dike cores shall be relatively incompressible and compacted at a water content up to 4% above the optimum to at least 90% Standard Proctor Density.

(C) The soil used for sealing shall be at least 12 inches thick with the coefficient of permeability (K) no greater than 10^{-7} cm/s. The soil seal shall be applied in lifts no greater than 6 inches.

(D) Written certification to the effect that the seal was provided and applied in accordance with specifications and that the coefficient of permeability is equal to or less than 10^{-7} cm/s shall be furnished by the project engineer and independent soils laboratory. The written certification shall include

(i) the number of samples taken;

(ii) a map of the location of the samples taken; and

(iii) a demonstration that the location and number of samples taken are representative of the seal of the lagoon, for both the bottom of the lagoon and all sides of the lagoon dike walls.

(2) **Bentonite seal.**

(A) The application rate shall be at least 125% of the minimum rate that is determined to be adequate by laboratory tests.

(B) The water content of the soil-bentonite mixture shall be up to 4% above the optimum for maximum compaction. Bentonite shall be applied to soil that is

free of all vegetation, trash, roots, frozen soil, snow or ice, stones over 2 inches in diameter or other objectionable material.

(C) Split the material in half and apply in 2 perpendicular 3-inch lifts for a finished compacted blanket thickness of at least 6 inches.

(D) After mixing and compacting, analyze a sample of the soil/bentonite mixture for permeability. If the coefficient of permeability exceeds 10^{-7} cm/s, the depth of the mixture or content of bentonite shall be increased as necessary to obtain the required seal.

(E) Compact the mixture at the proper water content to at least 90% Standard Proctor Density (specifically excluding use of a sheepsfoot roller).

(F) Cover the completed seal with at least 4 inches of soil in addition to necessary erosion control.

(G) Hydrate with fresh water and keep at or above the optimum water content until the pond is prefilled.

(H) Written certification to the effect that the seal was provided an applied in accordance with specifications and that the coefficient of permeability is equal to or less than 10^{-7} cm/s shall be furnished by the project engineer and independent soils laboratory. The written certification shall include:

(i) the number of samples taken;

(ii) a map of the location of the samples taken; and

(iii) a demonstration that the location and number of samples taken are representative of the seal of the lagoon, for both the bottom of the lagoon and all sides of the lagoon dike walls.

(3) **Synthetic liner.**

(A) The synthetic liner shall be at least 30 mils (0.030 inch) thick, unless the lagoon is subject to heavy traffic, in which case the liner shall be at least 60 mils (0.060 inch) thick.

(B) Remove or cover sharp objects in the subsoil with a bedding of ~~2 to~~ 4 inches of clean soil or sand.

(C) Use 4-inch perforated pipe to allow venting and draining of the soil to reduce gas and hydrostatic pressures and facilitate monitoring for leakage.

(D) The synthetic liner panels shall be laid out in a longitudinal direction and sealed with an overlap of 4 to 6 inches.

(E) The anchor trench shall be a 6-inch minimum depth and placed at least 9 to 12 inches beyond the slope break of the dike.

(F) Take adequate measures to protect the integrity of the liner including UV protection. ~~On dike slopes, backfill shall consist of at least a 3-inch layer of sand or finely textured soil. and covered with at least a 3-inch layer of heavier cobble, coarse gravel or small riprap.~~

(4) **Uniformity.** The bottom shall be as level as possible. Finished elevations shall not deviate more than 3 inches from the average elevation.

(5) **Prefilling.** Protect the integrity of the liner by hydrating with fresh water until the lagoon is used.

(d) **Influent lines.** Influent lines shall terminate in a flow distribution manhole or control structure with the invert at least 6 inches above the maximum design high water elevation of the lagoon. Design the control structure to proportionally split the flow to the primary cells.

(1) **Placement.** Raw sewage distribution lines may be placed on the surface of the lagoon bottom. Anchor pipe to prevent floating or settling. Soil shall not be mounded over the distribution lines. The method of construction shall not alter the integrity of the lagoon seal.

(2) **Point of discharge.** To minimize short-circuiting in primary cells, terminate influent lines at the lesser of either the center of the cell or a point at least 100 feet from the inside toe of any dike. Install multiple inlets when the distance from any inlet to the toe of an adjacent dike exceeds 250 feet. Terminate influent lines for aerated cells within the mixing zone of the aeration equipment.

(3) **Discharge apron.** To control erosion of the lagoon bottom, influent lines shall discharge horizontally into shallow, saucer-shaped depressions and terminate on a concrete apron. The apron shall be at least 2 feet square or 2 feet in diameter. Provide additional energy dissipating devices where influent will enter the lagoon at a high velocity.

(e) **Miscellaneous construction standards.** All pipes entering and exiting the seal shall be constructed with a seepage collar.

(f) **Control structures and interconnecting piping.**

(1) **Structure.** Provide structures to control water depth in cells, route water through the system, and measure flow at discharging facilities. Control structures in primary cells shall be capable of controlling the operating depth between a minimum of 3 feet and the maximum design operating depth. For suspended solids control, the discharge structure should allow the withdrawal point to vary below the surface to obtain the best quality effluent. Valves, slide tubes, dual slide gates or removable interlocking boards are recommended, and they shall:

(A) be accessible for maintenance and adjustment of controls;

(B) control water level and flow rate, and complete shutoff;

(C) be constructed of non-corrosive materials; and

(D) be located to minimize short-circuiting within the cell.

(2) **Discharge piping.** Pipe meeting ASTM standards for sanitary sewers shall be adequately anchored but not interrupt the integrity of the seal.

(A) **Hydraulic capacity.** The hydraulic capacity for continuous discharge structures and piping shall allow for a minimum of 250% of the design flow of the system.

(B) **Minimum pipe size.** All piping within the lagoon shall be at least 12 inches in diameter for facilities serving 100 PE or more and at least 8 inches for facilities serving less than 100 PE. Design influent pipe for rodding. Protect all piping between the lagoon cells from the entrance of turtles.

SUBCHAPTER 13. PRELIMINARY TREATMENT STANDARDS

252:656-13-2. Grit chambers

(a) **Where required.** Grit chambers are required at all mechanical sewage treatment plants, ahead of pumps and other equipment that may be damaged by grit.

(b) **Outside facilities.** Protect grit removal facilities located outside from freezing.

(c) **Chamber design.**

(1) Rectangular horizontal-flow grit chambers shall be designed to regulate velocity to minimize organic matter deposition. Channels shall be designed for velocities of 0.8 to 1.3 fps, with a total detention time of 20 seconds to one minute.

(2) Aerated grit chambers shall be designed for a detention time of two (2) to five (5) minutes. Aerated grit chambers shall be sized in accordance with Appendix A.

(d) **Grit washing.** Provide grit washing devices to further separate organic and inorganic materials in all chambers not equipped with positive velocity control. Include provisions for draining each unit.

(e) **Grit removal.** Provide facilities for hoisting grit to ground level from equipment located in deep pits, provide access by stairways, and provide adequate ventilation and lighting.

(f) **Grit disposal.** Provide for the removal, handling, storage and disposal of grit.

(g) **Vortex-type grit chambers.**

(1) The flow into the grit chamber shall be through a straight and smooth channel. The length of the inlet channel must be at least seven (7) times the width or fifteen (15) feet, whichever is greater.

(2) Total detention time in the chamber at design flow is thirty (30) seconds.

(3) The equipment specifications shall identify the required grit removal rates. Removal rates shall be based on the equipment manufacturer's specifications for downstream processes and meet the following minimum criteria:

(i) 95% removal rate for 50-mesh grit.

(ii) 85% removal rate for 70-mesh grit.

(iii) 65% removal rate for 100-mesh grit.

(4) Provide a propeller with a variable speed drive to operate the unit based on the plant flow.

(5) Provide air or water scour to loosen compacted grit and facilitate the grit lifting and removal from the chamber.

(6) Provide inclined screws, conveyors, chain elevators or pumps, including top mounted self-priming suction lift pumps to lift the grit from the chamber and transfer the grit to the washing and separating facilities. Air ~~or suction~~ lift pumps shall not be used for this purpose.

(7) Automatically controlled grit lifting, washing and separating equipment with the ability to manually override.

SUBCHAPTER 21. DISINFECTION STANDARDS

252:656-21-2. Chlorine disinfection systems

(a) **Equipment capacity.** The following requirements are for the chlorination of non-industrial wastewater. The equipment shall be capable of supplying the following dosage as applicable:

(1) Trickling filter plant effluent - 10 mg/l;

(2) Activated sludge plant effluent - 8 mg/l;

(3) Tertiary filtration effluent - 6 mg/l;

(4) Nitrified effluent - 6 mg/l; and

(5) Category 2 water reuse chlorination systems - 12 mg/l or a dose sufficient to achieve high level disinfection for water reuse requirements.

(b) **Chlorine mixing.**

(1) **Mixing.** The disinfectant shall be mixed as rapidly as possible to ensure complete mixing.

(2) **Contact period.** Provide the following contact periods:

(A) For OPDES permit compliance or Categories 3 and 4 water reuse chlorination systems, provide a minimum contact period of 15 minutes at peak hourly wastewater flow or maximum pumping rate after mixing.

(B) For Category 2 water reuse chlorination systems, alone or in combination with UV, provide sufficient free chlorine residual concentration at the end of the contact tank and modal contact time sized using the anticipated design flow after mixing at a design temperature of 5 °C (41 °F) and a pH of 8.0 to meet the micro-organism log removal requirements in 252:656-27-3(a)(6).

(3) **Contact tank.** Construct chlorine contact tanks to minimize short-circuiting. "Over-and-under" or "end-around" baffling shall be provided to reduce short-circuiting. Design the tanks for easy maintenance and cleaning without reducing the effectiveness of disinfection. Provide duplicate tanks, mechanical scrapers or portable deck-level vacuum cleaning equipment. Provide skimming devices on all contact tanks, and provide for draining the tanks.

(c) **Gas chlorine equipment rooms.**

(1) **Separation.** If the building that houses the gas chlorine equipment is used for other purposes, a gas-tight room shall be provided to separate the gas chlorination equipment and chlorine cylinders from other parts of the building. Do not connect floor drains from the chlorine room to floor drains from other rooms. Doors to this room shall open only to the outside of the building, with panic hardware, at ground level and allow easy access to all equipment. For one-ton chlorine cylinders, separate the storage area from the feed area. Locate chlorination equipment as close to the application point as is reasonably possible. Certify the installation will meet OSHA standards, and that the doors and emergency equipment are compatible with chlorine.

(2) **Inspection window.** Install a shatter resistant, clear glass, gas-tight window in an exterior door or interior wall of the chlorinator room so the units can be viewed without entering the room.

(3) **Heating.** Heat disinfection equipment rooms to maintain at least 60 °F. Protect the gas chlorine cylinders from excess heat, and maintain the cylinders at essentially room temperature.

(4) **Ventilation.** Provide mechanical ventilation capable of one air change per minute for chlorine. The entrance to the room exhaust duct shall be near the floor. The point of discharge shall not contaminate inhabited areas or the air inlet to any buildings. Locate fresh air inlets to provide cross ventilation with air and at a temperature that will not adversely affect the chlorination equipment. Discharge the chlorinator vent hose above-grade to the outside atmosphere.

(5) **Electrical controls.** Locate fan and light switches outside the room near the entrance. A labeled signal light indicating fan operation shall be provided at each entrance when the fan can be controlled from more than one point.

(d) **Water supply.** Provide an ample supply of water to operate the chlorinator and protect it according to 252:656-9-2(b). Back up any booster pumps according to the power requirements of 252:656-9-2(a).

(e) **Scales.** Provide corrosion-resistant scales to weigh chlorine gas cylinders. Provide at least a platform scale. Provide a recording device for the weight of the chlorine gas cylinders for installation where one-ton cylinders or larger are used.

(f) **Containers.** One-ton containers or larger are required if more than 150 pounds of chlorine per day is needed. Limit the withdrawal rate to 40 pounds per day per cylinder for cylinders up to 150 pounds, and to 400 pounds per day for one-ton cylinders.

(g) **Handling equipment.** For cylinders up to 150 pounds, provide securing restraints and a hand-truck designed for the cylinders. For one-ton cylinders, provide:

(1) a hoist with 4,000-pound capacity;

(2) a cylinder lifting bar;

(3) a monorail or hoist with sufficient lifting height to pass one cylinder over another; and

(4) a cylinder trunnion(s) to allow exchanging the cylinders for proper connection.

(h) **Manifolds.** Gaseous chlorine cylinders may be connected to a manifold, only when all cylinders are maintained at the same temperature or the system is designed for gas transfer from a warm container to a cooler one. Do not connect liquid chlorine cylinders to a manifold.

(i) **Leak detection and controls.** Provide an emergency response plan for chlorine leaks. Provide a bottle of 56% ammonium hydroxide solution for detecting chlorine leaks. Where one-ton containers are used, provide a leak repair kit approved by the Chlorine Institute, include caustic soda solution reaction tanks to absorb leaks. Provide automatic gas detection and related alarm equipment. Air Pollution Control regulations may also require air scrubbing equipment.

(j) **Evaporators.** Demonstrate the required volume of chlorine can be supplied.

(k) **Respiratory protection.** Where chlorine gas is handled, provide respiratory air-pac protection equipment that meets the National Institute for Occupational Safety and Health (NIOSH) standards. Store the equipment and operating instructions at a convenient location outside the room where chlorine is used or stored. The units shall use compressed air, with at least a 30-minute capacity, and be compatible with units used by the local fire department. In the emergency response plan, describe how to maintain the equipment.

(l) **Sodium hypochlorite.** Follow equipment standards in OAC 252:626-11-4(g).

(1) **On-site Generation of Sodium Hypochlorite:**

(A) **Contact Time.** On-site generation is limited by the upper concentration of the chlorine solution produced. Design should account for concentration limit where contact time is required. Contact time is determined from free chlorine concentration only.

(B) **Ventilation.** A by-product of on-site generation is the formation of hydrogen gas. Design shall meet the following:

(i) Ventilation shall be designed to take suction from as near the ceiling as practical.

(ii) Ventilation piping shall slope towards an outlet and in a manner that does not trap hydrogen gas.

(iii) Provide hydrogen gas sensing equipment capable of interlocking with sodium hypochlorite generation equipment.

(iv) System shall have automatic turn off of the equipment in the event that one-half ($\frac{1}{2}$) the lower explosive limit (LEL) is reached.

(v) Separate gas sensing equipment shall interlock with the ventilation equipment.System shall automatically turn on in the event that one-fourth ($\frac{1}{4}$) the LEL for hydrogen is reached.

(vi) Provide at least one hydrogen sensor for any space that hydrogen gas is likely to accumulate.

(vii) Piping penetrating the roof must have a "T" or an "L" shape and a 24 mesh corrosion resistant screen.

(C) **Pretreatment.** To avoid fouling of the electrolytic cell, a water softener or other pretreatment method is required to prevent scaling during the process.

(D) **Brine Solution.** The salt used for the brine shall be high grade (99% pure) and shall be certified for use by the NSF for electrochlorination (NSF Standard 60). Provide the capability for diluting 12.5% bulk sodium hypochlorite to create less than one percent (1%) solution.

(E) **Storage.** Design shall meet the following:

(i) All chemical handling and storage shall be in accordance with OAC 252:626-11

(ii) Provide at least two (2) tanks with thirty (30) hours storage capacity at average daily for usage solution.

(iii) Protect concrete from corrosion.

(iv) Tanks shall be located in a structure to prevent freezing of all system components.

(v) Tanks shall be clear or provide a sight glass to determine brine level.

(F) **Waste Disposal.** Design shall be in accordance with OAC 252:626-13 to ensure proper disposal of the waste stream.

(G) **Warranty.** Provide a two (2) year warranty and maintenance on all equipment.

(H) **Redundancy.** Provide multiple units to meet maximum daily demand with the largest unit out of service.

(m) **Dechlorination.** When dechlorination is required by DEQ, the discharges shall have less than 0.1 mg/l total residual chlorine.

(1) **Equipment.** Do not chlorinate and dechlorinate with the same units. Handle aqueous solutions of sulphite or bisulfite with positive displacement pumps. Sulfur dioxide (SO_2) feed equipment shall account for the property of the gas to easily liquefy. With one-ton containers, take special precautions to prevent chemicals from liquefying. Provide multiple units to meet the operating requirements between the minimum and maximum wastewater flow rates and to avoid depleting dissolved oxygen in receiving waters.

(2) **Mixing.** Mechanical mixers are required unless the design will provide hydraulic turbulence to assure thorough and complete mixing.

(3) **Sulfonator water supply.** Provide an ample supply of water to operate the sulfonator, and protect it according to 252:656-9-2(b). Back up booster pumps according to the power requirements of 252:656-9-2(a).

(4) **Housing.** Storage and feed equipment for SO_2 shall be in a separate room from chlorine gas storage and feed equipment. The same storage requirements apply to SO_2 as for chlorine gas in (c) of this Section. Mixing, storage, and feed equipment areas shall be designed to contain spillage or leakage or to route it to an appropriate containment unit.

(5) **Respiratory protection.** Same as for chlorine gas in (k) of this Section.

252:656-21-4. Ozone disinfection

Use of Ozone for disinfection. Requests for use of ozone disinfection shall be reviewed and approved on a case-by-case basis. All ozone systems shall meet the requirements established in OAC 252:626-9-4 including the following:

(1) Disinfection by ozone shall meet requirements pursuant to OAC 252:656-27-3(b)(3).

(2) Disinfection by ozone shall meet inactivation of microorganisms as required in OAC 252:656-27-3(a)(6).

(3) Design shall identify the total CT requirement and evaluate ozone dose, potential ozone demand, plug flow contact time, and whether microflocculation of solids could cause compliance problems with other permit limits, such as effluent, TSS, and turbidity. These factors shall be determined based on one of the following:

(A) pilot studies

(B) a minimum of three (3) well documented analogous projects.

(C) CT calculations, EPA LTIESWTR Disinfection Profiling and Benchmarking Technical Guidance Manual, EPA 816-R-03-004, May 2003.

SUBCHAPTER 23. SUPPLEMENTAL TREATMENT STANDARDS

252:656-23-4. Membrane filtration

Requests to use membrane filtration shall be reviewed and approved on a case-by-case basis. All membrane filtration systems shall meet the construction standards outlined in OAC 252:626-9-9(f) with the following exceptions:

(1) **Source water testing [Exception to OAC 252:626-9-9(f)(1)].** For wastewater and reuse applications, source water shall be defined as the effluent from a suitable treatment process designed according to the construction standards outlined in this chapter. This water shall be tested for all parameters that may affect membrane filtration and reuse water quality. Historic information shall be reviewed to determine water quality extremes that may be expected. Tabulated results of tests performed, summaries, and conclusions shall be submitted as part of the engineering report proposing membrane filtration.

(2) **Pilot plant verification study [Exception to OAC 252:626-9-9(f)(2)].** Prior to initiating the design of a membrane filtration system for wastewater or reuse applications, a pilot plant study is required to determine the best membrane to use. Submit pilot study protocol to DEQ for approval prior to initiating any pilot study. Pilot study duration shall be a minimum of three (3) months unless low variability in parameters critical to design warrant a shorter duration.

(3) **Log removal [Exception to OAC 252:626-9-9(f)(3)].** A pilot verification study shall be required for a membrane filtration system for wastewater or reuse applications only when removal credit is requested pursuant to OAC 252:656-27-3(a)(6).

(4) **Pretreatment [Exception to OAC 252:626-9-9(f)(5)].** Membrane filtration systems for wastewater and reuse applications shall be preceded by suitable biological treatment, disinfection to prevent biological growth and, if necessary, clarification processes designed according to the construction standards outlined in OAC 252:656-16 and OAC 252 656-17.

(5) **Turbidity monitoring [Exception to OAC 252:626-9-9(f)(10)].** Turbidity monitoring equipment shall be installed on all influent and effluent piping of membrane units. Continuous turbidity recording equipment shall be provided on the effluent piping and connected to an alarm system to warn operators of an excessive turbidity breakthrough for reuse applications.

(6) **Disinfection[Exception to OAC 252:626-9-9(f)(17)].** Membrane filtration systems shall be properly disinfected each time the membrane units are opened for maintenance and water shall not be sent into the reuse distribution system. Disinfectants prohibited by the

membrane manufacturer shall not be used through the membranes.

SUBCHAPTER 27. WATER REUSE

252:656-27-1. Categories of reclaimed water

The following are the categories of and allowed uses for reclaimed water:

(1) **Category 1.** Reserved.

(~~1~~2) **Category 2.** Category 2 reclaimed water shall only be used for the allowed uses in Categories 3, 4 and 5, and:

(A) drip irrigation on orchards or vineyards;

(B) spray or drip irrigation on sod farms, public access landscapes and public use areas/sports complexes, including unrestricted access golf courses;

(C) toilet and urinal flushing;

(D) fire protection systems;

(E) commercial closed-loop air conditioning systems;

(F) vehicle and equipment washing (excluding self-service car washes)~~; and~~

(G) range cattle watering~~.~~; and

(H) make-up water for oil and gas production.

(~~2~~3) **Category 3.** Category 3 reclaimed water shall only be used for the allowed uses in Categories 4 and 5, and:

(A) subsurface irrigation of orchards or vineyards;

(B) restricted access landscape irrigation;

(C) irrigation of livestock pasture;

(D) concrete mixing;

(E) dust control;

(F) aggregate washing/sieving;

(G) new restricted access golf course irrigation systems;

(H) industrial cooling towers,~~and~~once-through cooling systems, and closed loop systems such as boiler feed water;

(I) restricted access irrigation of sod farms~~.~~; and

(J) hydraulic fracturing.

(~~3~~4) **Category 4.** Category 4 reclaimed water shall only be used for the allowed uses in Category 5 and:

(A) soil compaction and similar construction activities; and

(B) existing restricted access golf course irrigation systems utilizing water that has received primary treatment in lagoon systems. Permits to construct shall not be issued for new Category 4 restricted golf course irrigation systems pending further research and evaluation of performance data collected from existing systems.

(~~4~~5) **Category 5.** Category 5 reclaimed water shall only be used for:

(A) restricted access pasture irrigation for range cattle;

(B) restricted access irrigation of fiber, seed, forage and similar crops; and

(C) irrigation of silviculture.

(6) **Category 6.** Category 6 reclaimed water, which does not require a permit to supply, shall only be used within the wastewater treatment plant and includes:

(A) dilution water for chemicals used in the process such as polymers,coagulants, chlorination or dechlorination;

(B) mechanical seal water for gas compressors, pumps and other equipment;

(C) mechanical seal water and cooling water for pumps;

(D) odor and gas absorption including bio-filters used for odor control;

(E) centrifuge flushing;

(F) flushing grit and sludge pipes;

(G) gravity thickener make-up water;

(H) supply water for filter backwash;

(I) headworks screen washing;

(J) headworks screening washer-compactors;

(K) belt filter press;

(L) other reclaimed water that is permanently plumbed to a fixed nozzle and contained within unit operations;

(M) yard hydrants; and

(N) hose bibs.

252:656-27-4. Distribution systems

(a) **Cautionary language required.** The following cautionary language is required for reclaimed water piping, valves, outlets and appurtenances in distribution systems.

(1) Effective July 1, 2012, all reclaimed water piping, valves, outlets and appurtenances in distribution systems shall be colored purple (Pantone 522).

(2) Effective July 1, 2012, reclaimed water piping in a distribution system shall be embossed or integrally stamped on opposite sides every 3 feet with a warning that includes the following language: "CAUTION: RECLAIMED WATER-DO NOT DRINK."

(3) All reclaimed water piping installed prior to July 1, 2012, that does not comply with this subsection shall, at a minimum, be identified with above-ground signs containing the cautionary language in (2) of this subsection together with the international "Do Not Drink" symbol:

(A) every 300 feet;

(B) at every change in direction;

(C) in the road easement on both sides of the road at every road crossing; and

(D) at every outlet.

(b) **Hose bibs and yard hydrants.** Hose bibs shall be located in locked, below-grade vaults. Reclaimed water hose bibs, yard hydrants and/or similar outlets shall be equipped with a warning sign containing the cautionary language required in (a)(3) of this Section.

(c) **Distribution pipes.** Reclaimed water distribution pipes shall be designed and constructed to meet the requirements for sanitary sewer pipes in of 252:656-5-2, 252:656-5-3, 252:656-5-4 and 252:656-5-5.

(d) **Pumping stations and force mains.** Pumping stations and force mains shall be designed and constructed in

accordance with 252:656-7-1 through 4, with the following exceptions:

(1) Pump openings less than three inches (3") may be allowed when settled or filtered reclaimed water is pumped.

(2) Water reuse systems with the ability to divert all reclaimed water to the wastewater's permitted discharge point, without operator assistance, may be exempt from the requirement to equip the lift station with emergency wet well storage, backup power supply or duplicate pumps.

(e) **Reclaimed water flushing system.** Reclaimed water distribution systems shall be designed with all appurtenances necessary to adequately flush the distribution system to prevent slime growth and the regrowth of pathogens. Flushing plans shall be developed for all reclaimed water distribution systems and submitted for DEQ approval. Flushing plans shall also be included in reclaimed water systems' O&M manuals [see 252: 656-3-10] and in suppliers' DEQ approved inspection programs [see 252:627-1-5(f)]. All flushing systems shall include at a minimum:

(1) provisions for disposal of flushed water that prevent bypasses and discharges to waters of the state or elsewhere; and

(2) air gaps designed pursuant to 252:656-9-2 for all discharges to sanitary sewers.

APPENDIX A. DESIGN TABLES [REVOKED]

APPENDIX A. DESIGN TABLES [NEW]

OAC 252:656-13-2 (c) Aerated Grit Chambers:

Grit Chamber Measurement Units[a]		
Item	Unit	Range
Detention time at peak flowrate	Minutes	2-5
Dimension – Depth	Feet	7-16
Dimension – Length	Feet	25-65
Dimension – Width	Feet	8-23
Width to Depth Ratio	Ratio	From 1:1 to 5:1
Length to Width Ratio	Ratio	From 3:1 to 5:1
Air Supply per unit of Length	$Feet^3$ per minute per foot	3 – 8

[a]Chart from 1*Wastewater Engineering: Treatment, Disposal & Reuse*, Metcalf & Eddy, Inc., 4th Edition, (2003)

OAC 252:656-16-1(d)(1), Activated Sludge Aeration Basins:

AERATION TANK CAPACITIES & PERMISSIBLE LOADINGS FOR ACTIVATED SLUDGE PROCESSES			
Type of Process	Aeration Retention time[b]	Aeration Basin Loading[c]	F/M Ratio
	(Hours)	(lb BOD_5 per 1,000 ft^3/d)	(lb BOD_5/lb MLSS)
Conventional	6 – 8	30 - 40	0.25 - 0.50
Step Aeration	6 – 8	30 - 50	0.17 - 0.50
Extended Aeration/Oxidation Ditch	24	12 - 15	0.05 - 0.10

[b]Larger values for smaller plants, up to 5,000 "PE" design capacity
[c]Larger values for larger plants, over 5,000 "PE" design capacity

OAC 252:656-16-2(b), Trickling Filter Design:

DESIGN PARAMETERS FOR TRICKLING FILTERS				
	Hydraulic Loading		Organic Loading	
	gal/ft^2/day	Million gallons/acre/day	lbs BOD_5/1,000 ft^3 of media/day	lbs BOD_5/acre-ft of media/day
Standard Rate	45-90	2-4	5-12	218-523
High Rate	230-690	10-30	30-100	1300-4300

[OAR Docket #15-560; filed 6-15-15]

TITLE 300. GRAND RIVER DAM AUTHORITY
CHAPTER 20. ~~PURCHASING~~ACQUISITION POLICY

[OAR Docket #15-462]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
300:20-1-1. [AMENDED]
300:20-1-2. [AMENDED]
300:20-1-4. [AMENDED]
300:20-1-7. [AMENDED]
300:20-1-9. [AMENDED]
300:20-1-13. [AMENDED]
AUTHORITY:
Grand River Dam Authority; 82 O.S. 2010, § 861A(B)(1); 82 O.S.Supp. 2012, § 863.2(B).
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 18, 2014
COMMENT PERIOD:
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March 18, 2015
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 8, 2015
FINAL ADOPTION:
June 8, 2015
EFFECTIVE:
August 27, 2015
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The word "purchasing" has been replaced with "acquisition" to encompass the entire process whether it is by purchase, lease, or grants. "Employment services" has been added to the processes that may be exempt from competitive bidding to enable use of other acquisition methods. The market for certain types of engineers is highly competitive and there is often difficulty in obtaining formal bids from organizations that specialize in recruitment of the types of engineers needed. Language has been added to recognize the unique acquisition processes necessary for services related to 1) bond issuance and coordination with the State Bond Advisor and 2) the unique requirements for analyses or studies related to forecasting, rates, production costs, resource planning or customer contracts. Emergency acquisitions for items and services may be procured through the utilization of mutual aid agreements with government and non-government owned utilities.
CONTACT PERSON:
Ellen Caslavka Edwards, General Counsel, Grand River Dam Authority, P.O. Box 409, Vinita, OK 74301, (918) 256-0800.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

300:20-1-1. Introduction to ~~purchasing~~acquisition rules

(a) **General.** These rules explain and facilitate understanding of the Authority's functions related to ~~purchasing~~acquisitions.

(b) **Application of the rules.** These rules are expressly designed to implement the Board's policy and state law. Procedures will conform to changes in rule or law and when necessary, procedures will be modified to refine the ~~purchasing~~acquisition process. These rules shall apply to all GRDA ~~purchases~~acquisitions except where noted otherwise herein. These rules do not apply to repairs, construction, or improvements to GRDA facilities or land that are governed by Title 61 of the Oklahoma Statutes.

(c) **Repairs, construction, or improvements to GRDA facilities and land.** For purchases for repair, construction or improvements to GRDA facilities or land that are governed by the provisions of Title 61 of the Oklahoma Statutes, GRDA will utilize forms and processes comparable to those prescribed by the Office of Management and Enterprise Services ("OMES") Construction and Properties Division. Where the provisions of Title 61 and the rules promulgated thereunder refer to the "Construction and Properties Division" the GRDA Central Purchasing Unit shall perform the duties of the OMES Construction and Properties Division for GRDA purchases when GRDA is allowed under Title 61 to perform such processes or assume such responsibilities. Where the provisions of Title 61 or related administrative rules applicable thereto refer to the "Construction and Properties Division Administrator" or "Administrator" the employee designated by the GRDA Chief Financial Officer shall assume such responsibilities, in instances where the Construction and Properties Division has delegated such authority to state agencies or GRDA.

(d) **Exempt from competitive bidding processes.** Acquisitions of professional services as defined in Section 803 of Title 18 or acquisitions pursuant to the Oklahoma State Interlocal Cooperation Act, as well as power capacity, energy, transmission and ancillary services, insurance, banking, government relations or business expense acquisitions described in Section 300:20-1-15(c), employee training, conference registration, employment services, or utility acquisitions are exempt from the competitive bidding processes described herein. Similarly, the acquisition of coal, natural gas, or other energy resources may be confidential or may require special acquisition processes. Therefore the selection of vendors for these products or services may deviate from the guidelines set forth herein. Acquisitions for financial services, underwriting, or other bond issuance services and consulting services related to customer rates, load forecasts, and related financial/engineering services may require special acquisition processes that will be coordinated with the State Bond Advisor's office or the Board of Director's Audit, Finance, Budget and Policy Committee.

(e) **Definitions**

(1) **Acquisition.** The process of obtaining items, products, materials, supplies, services (including construction), and equipment by purchase, lease-purchase, lease with option to purchase or rental pursuant to the

GRDA ~~Purchasing~~Acquisition Policy and Procedures and applicable State laws and directives.

(2) **Acquisition approval or signature authority.** The approval delegated by the Board of Directors or General Manager for a GRDA employee to approve a purchase order or resulting payment thereof.

(3) **Bid.** The cost proposal submitted by a vendor in response to a request or solicitation from the GRDA for a project described in plans and/or specifications provided by GRDA.

(4) **Board of directors.** The rule-making authority and governing body of the Grand River Dam Authority as defined by 82 O.S. § 863.2.

(5) **Central purchasing unit.** The specialist unit within the GRDA Finance Department that is responsible for supervising and managing the acquisitions of materials, supplies, and services that are used by the Authority and for administering ~~procurement~~acquisition policies, rules, and procedures.

(6) **Emergency acquisition.** An acquisition made without following normal acquisition procedures in order to obtain goods or services to meet an urgent and unexpected requirement. An "Emergency" shall be identified as: an event that consists of one or more of the following:

(A) Correction of an immediate hazardous condition which affects the safety of personnel or the public health;

(B) Prevention of immediate damage to property or the reduction in reliability of electric generating equipment;

(C) Avoidance of purchase of alternative power to replace otherwise generated power;

(D) Maintenance of the efficient and orderly completion of work-in-progress;

(E) Correction of an immediate regulatory compliance deficiency;

(F) To obtain needed items when market conditions (e.g. natural disaster, terrorist act, etc.) limit the product or service availability, or when vendors may not be able to quote firm prices as would be possible under normal market conditions;

(G) To prevent or minimize the serious disruption of services to customers;

(H) To keep facilities operating, to ensure continuous transmission service, or when a Board meeting has been cancelled and thus it is necessary to avoid disruption of the ~~purchasing~~acquisition process when a bid may expire prior to the next regularly scheduled Board meeting;

(I) Emergency acquisitions made pursuant to Title 61 of the Oklahoma Statutes.

(7) **General manager or chief executive officer.** The GRDA employee who has oversight and managerial responsibility over all GRDA functions and is selected by the Board of Directors of the Grand River Dam Authority as authorized by 82 O.S. § 864.A.2.

(8) **GRDA or authority.** The Grand River Dam Authority, a governmental agency of the State of Oklahoma, as defined by 82 § 816, et seq.

(9) **Low Dollar ~~Purchase~~Acquisition.** ~~A~~An~~purchase~~acquisition for goods or services that does not exceed the competitive bid dollar threshold as determined by the General Manager.

(10) **Procedures.** Procedures are the prescribed means of complying with the applicable statutes and rules. Procedures provide GRDA personnel with the guidelines and, where appropriate, specific action sequences to ensure uniformity, compliance and control of all policy-related activities.

(11) **Solicitation.** An invitation for bids, a request for proposal, telephone calls, or any document or method used to obtain bids or proposals for the purpose of entering into a contract.

300:20-1-2. Purpose

The purpose of the Authority's acquisition practices is to maintain, at all times, a continuous supply of goods and services necessary to support GRDA's operations. The Authority shall:

(1) Comply with the laws of the State of Oklahoma and the GRDA Bylaws governing policy and procedures for acquisitions.

(2) Ensure the uninterrupted flow of production by obtaining and ensuring delivery of an acceptable quality of goods and services at the maximum end-use value per dollar spent.

(3) Manage inventories of acquired goods so as to meet the use requirements of all GRDA departments at the lowest possible cost.

(4) Treat all prices, technical information, and other bidder information submitted by suppliers as confidential until after a supplier is selected and the contract is awarded.

(5) Amicably resolve complaints on all ~~purchased~~acquired goods and services.

300:20-1-4. Responsibilities

(a) The Board of Directors is responsible for promulgating comprehensive ~~Purchasing~~Acquisition Rules, and for approving or delegating approval of acquisitions.

(b) The General Manager shall have authority to approve acquisitions as may be delegated by the Board of Directors.

(c) Subject to the approval of the Board of Directors, the General Manager may delegate acquisition approval to other employees of the Authority and determine the dollar threshold for ~~purchases~~acquisitions that must be competitively bid.

(d) The Central Purchasing Unit has the responsibility for obligating the Authority and for making the final determination of source of supply, ultimate quantities ~~purchased~~acquired, delivery schedule, price, and commercial terms. These decisions will be made in conjunction with other departments as appropriate.

(e) The Central Purchasing Unit is to serve as the exclusive channel through which all requests regarding prices and products are handled. This Unit and no other shall conduct all communications with suppliers involving prices or quotations. Close communication and coordination between the Central Purchasing Unit and the department requesting supplies must occur. The General Manager is responsible for determining the dollar threshold for those ~~purchases~~acquisitions that may be competitively bid by departments or units of the Authority outside of the Central Purchasing Unit. Subsections (d) and (e) do not apply to emergency acquisitions and low-dollar ~~purchases~~acquisitions or ~~purchases~~acquisitions competitively bid by departments, units, or employees other than the Central Purchasing Unit.

(f) The ~~Chief Financial Officer or designee is responsible for maintaining~~ Authority shall maintain a uniform set of procedures and forms to service the competitive bid process in accordance with the dollar thresholds determined by the General Manager, the process for non-competitive acquisitions (sole source, sole brand, State Use, etc.), and other acquisition matters, including, but not limited to, evaluation, award, change orders, contract administration, or disputes. ~~These procedures shall be submitted to the Board of Directors for review.~~ Central Purchasing Unit personnel and any other designated department, unit, or personnel are responsible for obtaining bids on all material or services covered under these rules as described herein or the internal uniform procedures.

(g) The Central Purchasing Unit with the approval of the General Manager may develop, test, utilize, ~~and~~ or implement new or alternative acquisition procedures and practices that hold potential for making the Authority's acquisition process more effective and efficient or to be consistent with industry practices. Examples of such acquisition procedures and practices may include, but not be limited to, contract negotiations, reverse auctioning, electronic commerce for online solicitations, notifications, and award. If such practices substantially vary with any procedures herein, the General Manager will notify the Board of such variances on the monthly ~~Purchase Order~~Acquisition report provided to the Board.

300:20-1-7. Local ~~purchases~~acquisitions

Acquisitions from vendors in the State of Oklahoma will be referred to as local vendors. It will be the policy to encourage meaningful participation by local vendor sources, whenever possible, to provide useful and acceptable quality services or materials at competitive prices.

300:20-1-9. Purchases for employees

It shall be the duty of the Central Purchasing Unit to ~~procure~~make acquisitions for the Authority and not attempt to invest Authority time in acquisitions for the personal gain of its employees. This policy does not include the Authority's program for supplying safety equipment for the employee at discounted rates, to acquisitions made for employee recognition purposes as may be allowed by state statutes, or such other acquisitions that may be approved by the General Manager.

300:20-1-13. Emergency ~~purchase~~acquisition orders

In the event the General Manager or designee determines that an emergency exists requiring ~~purchase~~acquisition of an item or service or a series of related items or services, to ensure continued operation of transmission and generation capabilities, or as otherwise defined in Rule 300:20-1-1(e)(6), and the total cost exceeds the dollar threshold delegated to the General Manager by the Board of Directors, the General Manager may declare an emergency situation and immediately authorize the ~~purchase~~acquisition of necessary materials or services. Such emergency ~~purchases~~acquisitions shall be presented to the GRDA Board for formal approval at the next regularly scheduled Board meeting. Regardless of dollar amount, GRDA may utilize mutual aid agreements with government and non-government owned utilities for the acquisition of items and services during an emergency.

[OAR Docket #15-462; filed 6-12-15]

TITLE 300. GRAND RIVER DAM AUTHORITY
CHAPTER 35. LAKE RULES

[OAR Docket #15-463]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. Definitions, Purpose and Application
300:35-1-1. [AMENDED]
Subchapter 3. General Provisions
300:35-3-5. [AMENDED]
300:35-3-9. [AMENDED]
300:35-3-10. [AMENDED]
300:35-3-14. [AMENDED]
300:35-3-15. [AMENDED]
Subchapter 5. Boating Safety Rules
300:35-5-6. [AMENDED]
300:35-5-10. [NEW]
Subchapter 7. Vessels
300:35-7-9. [AMENDED]
300:35-7-12. [AMENDED]
Subchapter 11. Permits for Wharves, Landings, Buoys, Breakwaters and Docking Facilities
300:35-11-12. [AMENDED]
300:35-11-13. [NEW]
Subchapter 13. Permits for Dikes, Excavations, Dredgings, Erosion Control Devices, Retaining Walls, and Shoreline Stabilization
300:35-13-4. [AMENDED]
Subchapter 15. Commercial Use of the Lakes and Lands of GRDA
300:35-15-1. [AMENDED]
300:35-15-2. [AMENDED]
Subchapter 17. Raw Water Permits
300:35-17-1. [AMENDED]
Subchapter 21. Administration of Rules and Hearings
300:35-21-1. [AMENDED]
300:35-21-3. [AMENDED]
300:35-21-4. [AMENDED]
300:35-21-7. [AMENDED]
300:35-21-8. [AMENDED]
Subchapter 27. Vegetation Management Plan
300:35-27-7. [AMENDED]
Subchapter 29. Shoreline Management Plans [NEW]
300:35-29-1. [NEW]

AUTHORITY:
Grand River Dam Authority; 82 O.S. 2010 § 861A(B)(1), 82 O.S.Supp.2012 § 863.2(B).

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 18, 2014
COMMENT PERIOD:
January 15, 2015 through February 16, 2015
PUBLIC HEARING:
February 18, 2015
ADOPTION:
March 17, 2015
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
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APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 8, 2015
FINAL ADOPTION:
June 8, 2015
EFFECTIVE:
August 27, 2015
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed amendments include new rules for water jet packs, boating in Woodard Hollow, and the Shoreline Management Plans. Language has been added which states no dock shall extend more than one-third of the cove and measurement guidance has been provided. New rules are included to distinguish which land areas may be hunted and Ottawa County hunting rules have been established. Guidelines have been proposed for revocation of a dock installer's permit. A clarification has been added that fees will be charged on a dock permit from the date of ownership. The rules relating to hearings for violation of rules have been reorganized and expanded for clarity and improved sequential order. Other general clarifications have been made.
CONTACT PERSON:
Ellen Caslavka Edwards, General Counsel, Grand River Dam Authority, P.O. Box 409, Vinita, OK 74301, (918) 256-0800.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 1. DEFINITIONS, PURPOSE AND APPLICATION

300:35-1-1. Definitions

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

"Authority or GRDA" means the Grand River Dam Authority.

"Board" means the Board of Directors for the Grand River Dam Authority.

"GM" or **"CEO"** means the General Manager and/or the Chief Executive Officer of the Grand River Dam Authority.

"GRDA land" or **"GRDA property"** or **"lands of GRDA"** means the land owned by GRDA. The location and boundaries of GRDA land is determined by a legal description (generally described by metes and bounds). Many times, a survey is necessary to determine the boundary of GRDA land. A particular elevation does not necessarily determine the boundary of GRDA land. Additionally, GRDA and/or the U.S. Army Corps of Engineers may have flowage easements over land.

"Neosho Management Area" means all GRDA lands owned in Ottawa County along the Neosho and Spring Rivers not used in the delivery and transmission of electricity.

"Wake" means the track of waves left by a vessel or other object moving through the water and such waves are greater than the natural waves in the immediate area of the vessel or are cresting and showing white water or may cause injury to any person or property. However, a "no wake zone" is not violated when a vessel is safely proceeding with engine(s) engaged at normal idle speed.

"Water Jet Pack" means a propulsion system using jets of water and allows the operator to move above or below the surface of the water.

"Water Jet Pack Unit" means a person being propelled in the air by water forced through a tube, the propulsion equipment worn by the person, and shall also include the vessel/PWC used to propel the equipment. This system may also be known as a jetlev, aquaboard or aquaflyer.

"Waters of GRDA" means and refers to the waters of the Grand River and its tributaries, including, but not limited to, Grand Lake O' the Cherokees, Lake Hudson, and the W.R. Holway Reservoir.

SUBCHAPTER 3. GENERAL PROVISIONS

300:35-3-5. Transfer or assignment of permit prohibited

Transfer or assignment of permits or licenses issued hereunder (both private and commercial) shall not be made except with written consent and approval of GRDA. Additionally, all delinquent unpaid fees, plus interest at the rate of ten percent (10%) per annum must be paid prior to a transfer. In the event the current owner's use occurred prior to the transfer, the current owner shall be responsible for all fees incurred throughout the timeframe of current ownership. No person, firm or corporation shall allow his or its name to be used by any other person, firm or corporation to do any work under his or its permit.

300:35-3-9. Fishing and hunting

(a) Fishing or hunting within restricted areas will not be permitted~~,~~.

(b) Fishing or hunting will not ~~nor will hunting or fishing~~ be permitted within two hundred (200) feet of the tailraces below the dams~~;~~.

(c) ~~nor will~~ Fishing or hunting ~~or fishing~~, except commercial bait operators, will not be permitted at such other points on or about the lakes where such use will unduly interfere with navigation or proper conduct of the business of GRDA or endanger the public.

(d) Fishing and hunting in the Neosho Management Area (NMA) will only be allowed when properly permitted by GRDA. All permitted individuals shall have a proper hunting license in accordance with Oklahoma law and shall only use

shotguns, primitive firearms, or proper archery equipment. No rifles shall be allowed within the NMA. Additionally trees, or shrubs of any kind from GRDA land shall not be utilized for ground blinds, but temporary commercial ground blinds that can be deployed on site by the hunter may be permitted upon application. No commercial ground blinds are permitted to be deployed overnight.

(e) No hunting shall be allowed on GRDA lands used in the generation, delivery or transmission of electricity.

300:35-3-10. Firearms

(a) Only shotguns, primitive firearms, and proper archery equipment are allowed on GRDA property~~, except that hunters may use rifles and pistols, in compliance with state laws and wildlife regulations, on GRDA property which has been~~ designated as a Wildlife Management Area.

(b) All hunting on any GRDA property shall be conducted in accordance with Oklahoma Department of Wildlife Conservation regulations. If hunting within $\frac{1}{4}$ mile of GRDA waters, only nontoxic shot may be used.

(c) The discharge of any firearms or ~~bows~~archery equipment in, over or across the waters of the lakes is expressly prohibited except as regulated by the Oklahoma Department of Wildlife Conservation. In no event shall the use of firearms or ~~bows~~archery equipment be conducted in a manner which interferes with the business of GRDA's projects or endangers the public.

(d) Persons properly licensed to carry concealed weapons may do so only in accordance with the laws of the State of Oklahoma.

(e) Hunting on any GRDA lands below Twin Bridges is limited to shotguns with steel shot only and proper archery equipment.

300:35-3-14. Permit applications

(a) Applications for GRDA permits required by these Rules are available at the permitting office inside the GRDA Ecosystems & Education Center located at the west end of Pensacola Dam in Langley, Oklahoma or visit the website at www.GRDA.com.

(b) In addition to any other requirement that may be applicable to a permit application, GRDA may, in its sole discretion, forward any application to fish and wildlife resource agencies, environmental agencies, and/or tribes for comment.

(c) These Rules cover the following types of GRDA permits:

(1) Private and commercial docks, wharves, landings, anchorages, and boat houses;
(2) Buoys;
(3) Private and commercial breakwaters;
(4) Private and commercial rail-systems and tram systems;
(5) Fences located on GRDA lands;
(6) Boat ramps;
(7) Retaining walls;
(8) Dredging (and excavation);
(9) Erosion control devices;
(10) Shoreline stabilization;
(11) Commercial operations (including, but not limited to, a dock installer, dredging contractor, commercial boat operator, vessel rentals, or Water Jet Pack Unit rentals);
(12) Taking of raw water~~ (including irrigation)~~;
(13) Vegetation management plans; and
(14) Sanctioned event.

(d) Permit applications are subject to change without notice. Permitted activities must comply with all standards, rules and regulations in effect at the time the activity commences.

300:35-3-15. Penalty

After notice and an opportunity to be heard in accordance with Subchapter 21 herein, any person, firm, partnership, corporation or other entity which violates any Rule in this Chapter (i.e. Chapter 35 Lake Rules), shall be required to pay all costs (including attorneys fees, GRDA staff time, and mitigation) related to the violation including the repair, restoration and reclamation of GRDA lands and waters. Other penalties may include, but are not limited to, suspension or revocation of a permit for a period of up to and including three (3) years~~.~~; and any other fee, penalty or fine as authorized by statute. Also, GRDA may seek an injunction to prevent any violation or unauthorized activity.

SUBCHAPTER 5. BOATING SAFETY RULES

300:35-5-6. Prohibited areas

All vessels are prohibited from entering any area within 200 feet below or above Pensacola, Kerr and Chimney Rock Dams. Vessels are prohibited within 500 feet below said dams during periods of ~~hydrogenation~~hydrogeneration or the spilling of water through floodgates.

300:35-5-10. Persons using Water Jet Packs

The following rules shall apply in the watercraft used in conjunction with a Water Jet Pack along with the person using the Water Jet Pack:

(1) A distance of 100 feet shall be maintained from any other person, watercraft, PWC or other fixed object at all times.
(2) Six feet of water is required to operate the Water Jet Pack Unit.
(3) The operator of the Water Jet Pack and the operator of the watercraft/PWC propelling the Water Jet Pack shall wear a life vest at all times.
(4) The person operating the Water Jet Pack shall wear a helmet at all times.
(5) The PWC or unit used to power the Water Jet Pack shall have an orange warning flag when in operation.
(6) Only one person may operate the Water Jet Pack at one time and there shall not be any passengers on the Water Jet Pack or Water Jet Pack Unit.
(7) No person under the age of 18 shall operate a Water Jet Pack or a Water Jet Pack Unit without the supervision of a person over the age of 25 years.

(8) A Water Jet Pack may only be operated during the hours between one-half hour after sunrise and one-half hour before sunset.

SUBCHAPTER 7. VESSELS

300:35-7-9. Hazardous acts

(a) In addition to the rules of travel for operation of vessels upon the lakes, all vessels shall be operated in such a manner as will best safeguard the lives and property of others upon the lakes.

(b) Any person conducting himself/herself in such a manner as to endanger the health and safety of others upon the lakes or lands of GRDA, or violate any of the statutes of the State of Oklahoma, may be removed from the lakes or lands of GRDA and subject to the fee, penalty or fine as authorized by~~of~~ any applicable law.

300:35-7-12. Duck Creek and Woodard Hollow boating rules

Due to the unique nature of Duck Creek and Woodard Hollow on the Grand Lake O' the Cherokees, GRDA implements, from time to time, special boating rules for the area. Please contact the GRDA Police, located at the GRDA Ecosystems & Education Center in Langley, Oklahoma, or visit the website, www.GRDA.com for the current applicable Duck Creek and Woodard Hollow Boating Rules.

SUBCHAPTER 11. PERMITS FOR WHARVES, LANDINGS, BUOYS, BREAKWATERS AND DOCKING FACILITIES

300:35-11-12. Dock modification prohibited

Any person, firm, corporation, business or other entity must obtain permission from GRDA prior to making any modification, change, addition or improvement to an existing dock, landing, anchorage, boat house, breakwater, buoy, rail-system, tram system, or fence. If any such structure will be reconfigured, modified, or expanded from the plans and specifications originally submitted for the construction of the structure, such change must be approved in advance by GRDA and prior to installation. Approval from the Federal Energy Regulatory Commission (FERC) may also be required. This rule applies to both private docks and commercial docks.

300:35-11-13. One-third cove rule for private and commercial docks

No dock shall extend more than one-third (1/3) of the cove measured from 745 feet elevation Pensacola Datum to 745 feet elevation Pensacola Datum. On Lake Hudson, the elevation shall be 622 feet mean sea level in figuring the one-third (1/3) of the cove rule. This rule applies to private docks and commercial docks.

SUBCHAPTER 13. PERMITS FOR DIKES, EXCAVATIONS, DREDGINGS, EROSION CONTROL DEVICES, RETAINING WALLS, AND SHORELINE STABILIZATION

300:35-13-4. Shoreline stabilization and retaining walls

(a) GRDA may issue permits allowing adjacent residential landowners to stabilize eroding shorelines on GRDA-owned residential access shoreland. GRDA will determine if shoreline erosion is sufficient to approve the proposed stabilization treatment. No shoreline stabilization activities may be conducted until a permit from GRDA is issued. Shoreline stabilization may include i) the use of biostabilization, ii) the use of riprap to stabilize eroded shorelines, or iii) the use of a retaining wall.

(b) Biostabilization of eroded shorelines.

(1) Moderate contouring of the bank may be allowed to provide conditions suitable for planting of vegetation.

~~(2) Tightly bound bundles of coconut fiber, logs, or other natural materials may be placed at the base of the eroded site to deflect waves.~~

~~(3) Willow stakes and bundles and live cuttings of suitable native plant materials may be planted along the surface of the eroded area.~~

(~~4~~2) Native vegetation may be planted within the shoreline management zone to help minimize further erosion.

(~~5~~3) Riprap may be allowed along the base of the eroded area to prevent further undercutting of the bank.

(c) Use of riprap to stabilize eroded shorelines.

(1) The riprap material must be quarry-run stone, natural stone, or other material approved by GRDA.

(2) Rubber tires, concrete rubble, or other debris shall not be used to stabilize shorelines.

(3) Riprap material must be placed so as to follow the existing contour of the bank.

(4) Site preparation must be limited to the work necessary to obtain adequate slope and stability of the riprap material.

(d) Use of retaining walls for shoreline stabilization.

(1) Retaining walls shall be allowed only where the erosion process is severe and GRDA determines that a retaining wall is the most effective erosion control option.

(2) GRDA shall inspect the site of the proposed construction and consider whether the planting of vegetation or the use of riprap would be adequate to control erosion.

(3) GRDA shall determine that the proposed construction is needed and would not change the basic contour of the reservoir shoreline.

(4) The retaining wall must be constructed of stone, concrete blocks, poured concrete, or other materials acceptable to GRDA. Railroad ties, rubber tires, broken concrete (unless determined by GRDA to be of adequate size and integrity), brick, creosote timbers, and asphalt are not allowed.

(5) Reclamation of GRDA land that has been lost to erosion is not allowed.

(6) No existing retaining wall shall be repaired or rebuilt without a permit from GRDA. Repairs must be made with approved and acceptable material by GRDA.

SUBCHAPTER 15. COMMERCIAL USE OF THE LAKES AND LANDS OF GRDA

300:35-15-1. Definition

The keeping or operation of one (1) or more vessels, surfboards, aquaplanes, skis, personal watercraft or like devices, Water Jet Packs or like devices, docks, landings, anchorages, marine railways, dry docks or any concession, for pecuniary profit or gain on the water of the lakes or upon the property of GRDA, the carriage of any person, or persons, or of any goods, wares, merchandising or other freight, for a valuable consideration, whether directly or indirectly flowing to the owner, charterer, operator, agent or any other person, shall be deemed commercial use of the waters and lands of GRDA and will be allowed only after a permit has been issued.

300:35-15-2. Dock installer's permit

(a) Any person, firm, partnership, corporation, or any other entity operating for pecuniary gain or profit or any business that, directly or indirectly, is engaged in the building, placing, transfer, demolition or removal, of piers, wharves, landings, anchorages, floating boat houses, docks, barges or other floating structures of a stationary or semi-stationary nature upon the waters of GRDA shall obtain an annual permit. Such person or entity shall not build, place, transfer, demolish or remove a pier, wharf, landing, anchorage, floating boat house, dock, barge or other floating structure of a stationary or semi-stationary nature upon the waters of GRDA until a Dock Installer's permit has been issued by GRDA.

(b) At the time a new or substantially refurbished dock is installed or transferred, the dock installer shall post a permanent sign visible on the dock. The sign shall include the name of the dock installer, the dock installer's phone number and the year the dock was installed. The sign shall measure at least 5" x 5".

(c) A dock installer shall build, construct, place, transfer, demolish and remove docks in strict compliance with the plans and specifications approved by GRDA and in accordance with all applicable laws, regulations, rules and building codes. All ~~styrofoam~~Styrofoam, trash and construction materials shall be disposed in an environmentally appropriate fashion and shall not be allowed to remain or float in the waters of GRDA. All Styrofoam, trash and construction materials shall be stored off GRDA property and above the flowage easement. No dock shall be stored on GRDA property for longer than thirty (30) days. GRDA property shall not be used without prior written permission.

(d) A dock installer's permit may be revoked at any time during the permit period for the following reasons:

(1) Nonpayment of permit fee.

(2) Failure to comply with current dock standards.

(3) Installation of a dock not permitted by GRDA.

(4) Upon three sustained complaints of the public regarding the dock installer's business practices.

(5) Upon conviction of a felony or fraud misdemeanor crime by a court of competent jurisdiction of the owner of the dock installer business or dock installer related to the dock installer's business.

(6) Failure to maintain insurance required by GRDA and to provide GRDA with a certificate of insurance.

(7) Improper disposal or storage of waste and other dock materials upon GRDA property or flowage easement.

SUBCHAPTER 17. RAW WATER PERMITS

300:35-17-1. Definition

(a) For the purpose of these Rules and Regulations, the following terms shall apply "domestic and household use" shall mean water that is taken~~, used and consumed~~ by the permittee in and upon his premises for all usual and ordinary household uses and purposes which shall include sprinkling and watering lawns and gardens of not to exceed three (3) acres. The term "irrigation" shall mean water that is taken~~, used and consumed~~ by the permittee in and upon the premises covered by the permit for the purpose of irrigating lands, crops and vegetables growing in and upon said lands by ditches, canals, sprinkling systems and such other usual and ordinary means of irrigation.

(b) Water rights granted under these Rules and Regulations shall not be construed as the supplying or furnishing of water for domestic purposes to the public; such permits only grant the permittee the right to take and use the water as provided by these Rules and Regulations.

(c) Commercial use of water requires a written contract with GRDA.

SUBCHAPTER 21. ADMINISTRATION OF RULES AND HEARINGS

300:35-21-1. General manager duties

The General Manager of the Grand River Dam Authority is authorized to administer these Rules and Regulations. The General Manager, or the General Manager's designee, shall issue all permits and licenses provided for herein and may, at the sole discretion of the General Manager or the designee, hold such public meetings or hearings as deemed necessary related to such matters.

300:35-21-3. Hearings for violation of rules

(a) ~~The general procedures for hearings established by this Subchapter shall apply to proceedings conducted by GRDA for such purposes as suspending or revoking permits, enforcement matters, and assessing costs.~~**Notice of Violation.** A Notice of Violation may be issued by the General Manager or his designee after the discovery of a violation of any rule. A Notice of Violation shall be signed by the GRDA employee issuing it and shall state:

(1) The name of the person or entity responsible for the violation (the "respondent");
(2) A description of the nature of the violation;
(3) The remedial action and/or the relief required, which may include the imposition of a fee, penalty or fine as authorized by statute and/or the correction of any deficiency;
(4) A reasonable time to comply with the remedial action and/or the relief required;
(5) That the respondent may submit a response to the Notice of Violation, how and where a response may be submitted, and the deadline to submit a response; and
(6) That, in connection with the submission of a response to the Notice of Violation, the respondent may request a hearing before the General Manager or his designee to challenge the Notice of Violation.

(b) ~~Hearings may be initiated by GRDA staff by issuance of a Notice of Violation or by filing a Petition with the General Manager's Executive Secretary.~~ **Service of the Notice of Violation.** At the election of the GRDA, a Notice of Violation shall be served:

(1) By delivering a copy of the Notice of Violation to the respondent or by leaving a copy of the Notice of Violation at the respondent's dwelling house or usual place of abode with some person then residing therein who is fifteen (15) years of age or older, or by posting the Notice on the dock or walkway to the dock, or
(2) By mailing a copy of the Notice of Violation to the respondent by certified mail, return receipt requested, and delivery restricted to the addressee. Service by mail shall be effective on the date of receipt or if refused, on the date of refusal.
(3) In the event respondent cannot be notified as stated in paragraphs 1 and 2 above, service of the Notice of Violation may be made by publication of a notice one (1) day a week for three (3) consecutive weeks in a newspaper of general circulation which is published in the county where the violation occurred or an adjoining county.

(c) ~~For purposes of this subsection, Respondent shall be the person in whose name the permit is currently listed. The Respondent shall be the only person entitled to notice under this subsection.~~**Permits.** In matters involving permits issued by the GRDA, the respondent shall be the person in whose name the permit is currently listed. That person shall be the only person entitled to notice under this subsection.

(d) ~~The Notice of Violation or Petition shall inform the Respondent of the matter at issue and, if applicable, the alleged violation. Each Notice of Violation or Petition shall name the Respondent(s) and provide a brief statement of the facts and the relief requested. The Notice of Violation or Petition shall be signed by a GRDA staff member.~~**Response to Notice of Violation.** In the event that the respondent submits a response to the Notice of Violation, the response shall include a detailed statement of the reasons that respondent objects to the Notice of Violation and all arguments that the respondent desires to make at hearing, if requested. A respondent who fails to submit a response to the Notice of Violation in the time and manner stated in the Notice of Violation may be deemed by the GRDA General Manager or his designee to have waived the right to object or present a defense to the Notice of Violation.

(e) ~~The Notice of Violation or Petition shall specify that the Respondent may file a response, how and where the response may be filed, the number of days or a date certain within which to file the response, state any scheduled hearing date, place and time or include notice of the opportunity to request an administrative hearing, and shall be served on the named Respondent by certified mail, return receipt requested.~~**Hearing.** A respondent who requests a hearing must also submit a response to the Notice of Violation and must provide an address and telephone number that the GRDA may use to communicate with the respondent concerning the hearing and final order. Upon timely receipt of a request for a hearing, the General Manager or his designee shall set the matter for hearing and shall notify the respondent in writing of the hearing at least ten (10) calendar days before the hearing. Notice of the hearing shall be delivered to the respondent using the address specified in the response to the Notice of Violation and shall state the date, time and location of the hearing.

300:35-21-4. Hearing officer

The GRDA General Manager, or his designee, shall preside ~~at any~~over all ~~hearing~~ hearings as the hearing officer. The GRDA General Manager may ~~contract with~~appoint an individual ~~that~~who is not employed by GRDA to preside ~~at~~over any hearing as the hearing officer. The ~~functions~~authority of the hearing officer shall commence upon his~~/her designation~~ appointment and terminate upon the entry of a Final Order issued by the GRDA Board of Directors. The hearing officer shall have the duty to conduct a fair hearing, to take all ~~necessary~~reasonable action to avoid delay, and to maintain order. The hearing officer's authority shall include, but not be limited to:

(1) Arrange and change the date, time and place of hearings and issue ~~notice thereof~~notices of hearings;
(2) Hold conferences to settle, simplify or determine the issues in a hearing, or to consider other matters that may aid in the expeditious disposition of the hearing;
(3) Require parties to state their position in writing with respect to the various issues in the hearing and to exchange such statements with all other parties;
(4) Administer oaths and affirmations;
(5) ~~Examine witnesses and direct witnesses to testify~~Regulate the course of hearings;
(6) ~~Receive, rule on, admit, exclude or limit evidence~~Examine witnesses and direct witnesses to testify;
(7) ~~Rule on pending motions and procedural items~~Receive, rule on, admit, exclude or limit evidence.
(8) Rule on pending motions and procedural items; and
(9) Allow for continuances.

300:35-21-7. Administrative appeal

A challenge from the Board of Director's Final Order shall be made within twenty (20) days from the date of the Final Order to the District Court~~in accordance with Oklahoma law~~.

300:35-21-8. Noncompliance, violations and penalties

Any person, firm or corporation that fails to comply with, or violates any Rule promulgated by GRDA shall, after notice and an opportunity for hearing as provided for herein, be required to reimburse GRDA for any direct cost and overhead incurred as a result of such failure to comply or violation. Such costs may include, but are not limited to, the costs associated with the repair, restoration and reclamation of the lands and waters of GRDA and any storage costs for the ~~Respondent's~~respondent's personal property and any other fee, penalty or fine as authorized by statute. Additionally, GRDA may cancel any permit or license which has been issued in connection with said boat, structure or facility and may remove or cause it to be removed from GRDA's lands and waters.

SUBCHAPTER 27. VEGETATION MANAGEMENT PLAN

300:35-27-7. Penalties

After notice and an opportunity to be heard in according with Subchapter 21 herein, a permit issued pursuant to these rules may be suspended or revoked by GRDA upon a finding that the permit holder has violated any rule provided for herein. Additionally, the holder of the permit may be assessed costs which may include expenses necessary for the reclamation, restoration, and/or clean-up of GRDA land and waters and any other fee, penalty or fine as authorized by statute.

SUBCHAPTER 29. SHORELINE MANAGEMENT PLANS

300:35-29-1. Enforcement of the Shoreline Management Plan

Any and all activities occurring upon GRDA land encompassed within GRDA's federal hydropower licenses issued by the Federal Energy Regulatory Commission (FERC) shall be in accordance with the Shoreline Management Plan. A violation of the Shoreline Management Plan shall be subject to a fee, penalty or fine as authorized by statute.

[OAR Docket #15-463; filed 6-12-15]

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

[OAR Docket #15-499]

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PERMANENT final adoption
RULES:
Subchapter 7. SoonerCare
Part 1. General Provisions
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(Reference APA WF # 14-41)
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Approved by Governor's declaration on June 8, 2015
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SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Policy is revised to convey that electronic referrals will eliminate the need of paper referral documentation within members' medical records.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 7. SOONERCARE

PART 1. GENERAL PROVISIONS

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

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

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

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

(d) As approved and deemed appropriate, the OHCA may provide administrative referrals for specialty services. Administrative referrals are only provided by the OHCA under special and extenuating circumstances. Administrative referrals should not be requested as a standard business practice. The OHCA will not process retrospective administrative referrals, unless one of the following exceptions applies:

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

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

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

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

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

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

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

[OAR Docket #15-499; filed 6-12-15]

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

[OAR Docket #15-491]

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PERMANENT final adoption
RULES:
Subchapter 7. SoonerCare
Part 3. Enrollment Criteria
317:25-7-13 [AMENDED]
Part 5. Enrollment Process
317:25-7-28 [AMENDED]
(Reference APA WF # 14-09)
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The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 1115 Demonstration Project No. 11-W00048/6
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Subchapter 7. SoonerCare
Part 3. Enrollment Criteria
317:25-7-13 [AMENDED]
Part 5. Enrollment Process
317:25-7-28 [AMENDED]
Gubernatorial approval:
July 1, 2014
Register Publication:
31 Ok Reg 645
Docket number:
14-705
(Reference APA WF # 14-09)
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
SoonerCare Choice enrollment rules are amended to clarify children in the former foster care eligibility group are excluded from participation in SoonerCare Choice; children who are known to be in OKDHS custody are now eligible to participate in SoonerCare Choice.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 7. SOONERCARE

PART 3. ENROLLMENT CRITERIA

317:25-7-13. Enrollment ineligibility

Members in certain categories are excluded from participation in the SoonerCare Choice program. All other members are enrolled in the SoonerCare Choice program and subject to the provisions of this Subchapter. Members excluded from participation in SoonerCare Choice include:

(1) Individuals receiving services in a nursing facility, in an ~~intermediate care facility for the mentally retarded (ICF-MR)~~Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) or through a Home and Community Based Waiver.

(2) Individuals privately enrolled in an HMO.

(3) Individuals who would be traveling more than 45 miles or an average of 45 minutes to obtain primary care services.

(4) ~~Children who are known to the OHCA to be in custody, as reported by the Oklahoma Department of Human Services.~~ Individuals in the former foster care children's group (see OAC 317:35-5-2).

(5) Individuals who are eligible for SoonerCare solely due to presumptive eligibility.

(6) Non-qualified or ineligible aliens.

(7) Children in subsidized adoptions.
(8) Individuals who are dually-eligible for SoonerCare and Medicare.
(9) Individuals who are in an Institution for Mental Disease (IMD).
(10) Individuals who have other primary medical insurance.

PART 5. ENROLLMENT PROCESS

317:25-7-28. Disenrolling a member from SoonerCare

(a) The OHCA may disenroll a member from SoonerCare if:
(1) the member is no longer eligible for SoonerCare services;
(2) the member has been incarcerated;
(3) the member dies;
(4) disenrollment is determined to be necessary by the OHCA;
(5) the status of the member changes, rendering him/her ineligible for SoonerCare;
~~(6) the member is already enrolled in the SoonerCare Program, when they are taken or found to be in custody as reported by the Oklahoma Department of Human Services;~~
(~~7~~6) the member is authorized to receive services in a nursing facility, in an ~~intermediate care facility for the mentally retarded (ICF-MR)~~Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) or through a Home and Community Based Waiver; ~~or~~
(~~8~~7) the member becomes dually-eligible for SoonerCare and Medicare~~.~~; or
(8) the member becomes covered under other primary medical insurance.

(b) The OHCA may disenroll the member at any time if the member is disenrolled for good cause, as it is defined in OAC 317:25-7-27. The OHCA will inform the PCP of any disenrollments from his or her member roster.

(c) OHCA may disenroll a member upon the PCP's request as described in (1) through (5) of this subsection.
(1) The PCP may file a written request asking OHCA to take action including, but not limited to, disenrolling a member when the member:
(A) is physically or verbally abusive to office staff, providers and/or other patients;
(B) is habitually non-compliant with the documented medical directions of the PCP; or
(C) regularly fails to arrive for scheduled appointments without cancelling and the PCP has made all reasonable efforts to accommodate the member.
(2) The request from the PCP for disenrollment of a member must include one of more of the following:
(A) documentation of the difficulty encountered with the member including the nature, extent, and frequency of abusive or harmful behavior, violence, and/or inability to treat or engage the member;
(B) identification and documentation of unique religious or cultural issues that may be effecting the PCP's ability to provide treatment effectively to the member; or
(C) documentation of special assistance or intervention offered.
(3) The PCP may not request disenrollment because of a change in the member's health status, the member's utilization of medical services, diminished mental capacity, or uncooperative or disruptive behavior resulting from the member's special needs except when the member's enrollment with the PCP seriously impairs his/her ability to furnish services to this member or other members.
(4) The PCP must document efforts taken to inform the member orally or in writing of any actions that have interfered with the effective provision of covered services, as well as efforts to explain what actions or language of the member are acceptable and unacceptable and the consequences of unacceptable behavior, including disenrollment from the PCP.
(5) The OHCA will give written notice of the disenrollment request to the member.

[OAR Docket #15-491; filed 6-12-15]

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

[OAR Docket #15-502]

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Part 1. General Scope and Administration
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(Reference APA WF # 14-05)
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The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 1905(o) of the Social Security Act; The Deficit Reduction Act of 2005
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
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Part 1. General Scope and Administration
317:30-3-5. [AMENDED]

Gubernatorial approval:
July 1, 2014
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31 Ok Reg 22
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14-701
(Reference APA WF # 14-05)
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Agency cost-sharing rules are revised to permit an increase of copays to the federal maximum and to add new copay exemptions.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 3. GENERAL PROVIDER POLICIES

PART 1. GENERAL SCOPE AND ADMINISTRATION

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

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

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

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

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

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

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

(2) Once an assigned claim has been filed, the member must not be billed and the member is not responsible for any balance except the amount indicated by OHCA. The only amount a member may be responsible for is a co-payment, or the member may be responsible for services not covered under the medical programs. In any event, the member should not be billed for charges on an assigned claim until the claim has been adjudicated or other notice of action received by the provider. Any questions regarding amounts paid should be directed to OHCA, Provider Services.

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

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

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

(2) In the event there is a disagreement whether the services are in or out of the scope of the contracts referenced in (1) of this subsection, the Oklahoma Health Care Authority shall be the final authority for this decision.

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

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

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

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

(B) Members in nursing facilities and intermediate care facilities for ~~the mentally retarded~~individuals with intellectual disabilities.

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

(D) Native Americans providing documentation of ethnicity in accordance with 317:35-5-25 who receive items and services furnished by the Indian Health

Service, an Indian Tribe, Tribal Organization, or Urban Indian Organization or through referral under contract health services.

(E) Individuals who are categorically eligible for SoonerCare through the Breast and Cervical Cancer Treatment program.

(F) Individuals receiving hospice care, as defined in section 1905(o) of the Social Security Act.

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

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

(B) Emergency services provided in a hospital, clinic, office, or other facility.

(C) Services furnished to pregnant women, if those services relate to the pregnancy or to any other medical condition which may complicate the pregnancy.

(D) Smoking and Tobacco Cessation counseling and products.

(E) Diabetic supplies.

(3) Co-payments are required in an amount not to exceed the federal allowable for the following:

(A) Inpatient hospital stays.

(B) Outpatient hospital visits.

(C) Ambulatory surgery visits including free-standing ambulatory surgery centers.

(D) Encounters with the following rendering providers:

(i) Physicians,

(ii) Advanced Practice Nurses,

(iii) Physician Assistants,

(iv) Optometrists,

(v) Home Health Agencies,

(vi) Certified Registered Nurse Anesthetists,

(vii) Anesthesiologist Assistants,

(viii) Durable Medical Equipment providers, and

(ix) Outpatient behavioral health providers.

(E) Prescription drugs.

~~(i) Zero for preferred generics.~~

~~(ii) $0.65 for prescriptions having a SoonerCare allowable payment of $0.00-$10.00.~~

~~(iii) $1.20 for prescriptions having a SoonerCare allowable payment of $10.01-$25.00.~~

~~(iv) $2.40 for prescriptions having a SoonerCare allowable payment of $25.01-$50.00.~~

~~(v) $3.50 for prescriptions having a SoonerCare allowable payment of $50.01 or more.~~

(F) Crossover claims. Dually eligible Medicare/SoonerCare members must make a co-payment in an amount that does not exceed the federal allowable per visit/encounter for all Part B covered services. This does not include dually eligible HCBS waiver members.

(4) Aggregate cost-sharing liabilities in a given calendar year may not exceed 5% of the member's gross annual income.

[OAR Docket #15-502; filed 6-12-15]

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

[OAR Docket #15-496]

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n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Policy is revised to clean up language regarding the pharmacy lock-in program. Current policy locks members in to one primary physician and/or on pharmacy. Policy is revised to allow members to be locked in to an approved prescriber rather than primary care physician and pharmacy.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 3. GENERAL PROVIDER POLICIES

PART 1. GENERAL SCOPE AND ADMINISTRATION

317:30-3-14. Freedom of choice

(a) **Any Qualified provider.** The ~~Medicaid Agency~~Oklahoma Health Care Authority (OHCA) assures that any individual eligible for ~~Medicaid~~SoonerCare, may obtain services from any institution, agency, pharmacy, person, or organization that is contracted with OHCA and qualified to perform the services.

(b) **~~Recipient~~Member lock-in.** ~~Medicaid recipients~~SoonerCare members who have demonstrated ~~Medicaid usage~~utilization above the statistical norm, during a ~~12-month~~6-month period, may be "locked-in" to ~~one primary physician~~a prescriber and/or one pharmacy for medications classified as controlled dangerous substances in accordance with Federal Regulation 42 CFR 431.54.

(1) Over-utilization patterns by ~~Medicaid recipients~~SoonerCare members may be identified either by referral or by OHCA automated computer systems. ~~Medicaid~~SoonerCare records, for a ~~12-month~~6-month period, of those identified ~~recipients~~members are then reviewed. ~~Medical histories are ordered and~~Medical and pharmacy claim histories are reviewed by OHCA ~~medical~~pharmacy consultants to determine if high usage is medically justified.

(2) If it is determined that ~~Medicaid~~SoonerCare has been over-utilized, the ~~recipient~~member may be notified, by letter, of the need to select a ~~primary physician~~prescriber and/or pharmacy and of their opportunity for a fair hearing. If they do not select a ~~physician~~prescriber or pharmacy one is selected for them. ~~The primary care provider must be a general practice, family practice, OB-GYN, pediatrician or internal medicine physician and currently be enrolled as a Medicaid provider.~~ In some cases ~~recipients~~members may be sanctioned under OAC 317:35-13-7.

(3) The ~~provider~~prescriber and/or pharmacy of choice, unless ~~that provider has~~the aforementioned providers have been identified as having problems with ~~Medicaid~~ over-utilization, ~~is~~are notified by letter and ~~is~~ given an opportunity to accept or decline to be the ~~recipient's primary physician~~member's prescriber and/or pharmacy.

(4) When the provider accepts, a confirmation letter is sent to both ~~recipient~~member and provider showing the effective date of the arrangement. ~~The recipient will be issued a monthly Medicaid identification card which will designate them as a participant in the lock-in program.~~

(5) After the lock-in arrangement is made, the provider may file claims for services provided in accordance with OHCA ~~procedure~~guidelines.

(6) Locked-in ~~recipients~~members may obtain emergency services from an emergency room facility for an emergency medical condition or as part of an inpatient admission.

~~(7) Medicaid compensable visits to a specialist are covered when referred by the primary care physician. The primary care physician must be shown as the referring physician on Item 17 of HCFA 1500 submitted by the specialist.~~

(~~8~~7) If a claim for a controlled dangerous substance is filed by another ~~provider~~pharmacy, ~~it is reviewed to see if a referral was given or services were for an acute physical injury. Claims not meeting this criteria are denied and the recipient is responsible for charges~~the claim will be denied.

(~~9~~8) When a ~~recipient~~member is enrolled into the lock-in program, usage is monitored ~~when necessary~~periodically and reviewed every 24 months. A provider may send a written request for ~~recipient~~member review. If review indicates utilization patterns meet lock-in removal criteria, the ~~recipient~~member may be removed from lock-in at the discretion of OHCA staff.

(~~10~~9) During a review, OHCA may elect to continue lock-in, remove the ~~recipient~~member from lock-in because of medical necessity, remove them because of decreased utilization, or impose sanctions under OAC 317:35-13-7.

(~~11~~10) The ~~recipient~~member in the lock-in program may make a ~~written~~ request to change providers after the initial three months; when the ~~recipient~~member moves to a different city or if the ~~recipient~~member feels irreconcilable differences will prevent necessary medical care. Change of providers based on irreconcilable differences must be approved by OHCA staff or contractor.

(~~12~~11) OHCA may make a provider change when the provider makes a ~~written~~ request for change or may initiate a change anytime it is determined necessary to meet program goals.

[OAR Docket #15-496; filed 6-12-15]

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

[OAR Docket #15-531]

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Policy is revised to expand the scope of telemedicine for access.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 3. GENERAL PROVIDER POLICIES

PART 1. GENERAL SCOPE AND ADMINISTRATION

317:30-3-27. Telemedicine

(a) **Applicability and scope.** The purpose of this Section is to implement telemedicine policy that improves access to health care services ~~by enabling the provision of medical specialty care in rural areas to meet the needs of members and providers alike~~, while complying with all applicable federal and state statutes and regulations. Telemedicine services are not an expansion of SoonerCare covered services but an option for the delivery of certain covered services. ~~SoonerCare views telemedicine no differently than an office visit or outpatient consultation.~~ However, if there are technological difficulties in performing an objective ~~through~~thorough medical assessment or problems in the member's understanding of telemedicine, hands-on-assessment and/or in person care must be provided for the member. ~~Quality of health care must be maintained regardless of the mode of delivery.~~Any service delivered using telehealth technology must be appropriate for telemedicine delivery and be of the same quality and otherwise on par with the same service delivered in person. A telemedicine encounter must comply with the Health Information Portability and Accountability Act (HIPAA) ~~and shall include an originating site, distant site, and certified or licensed attendant to present the member at the originating site to the rendering provider located at the distant site~~. For purposes of SoonerCare reimbursement telemedicine is the use of interactive audio, video or other electronic media for the purpose of diagnosis, consultation or treatment that occur in real-time and when the member is actively participating during the transmission. Telemedicine does not include the use of audio only telephone, electronic mail, or facsimile transmission. Transfer of data from one site to another through the use of a camera or similar device that records (stores) an image that is sent (forwarded) via telecommunication to another site for consultation. Asynchronous or "store and forward" applications would not be considered telemedicine but may be utilized to deliver services.

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

~~(1) **"Certified or licensed health care professional"** means an individual who has successfully completed a prescribed program of study in any variety of health fields and who has obtained an Oklahoma state license or certificate indicating his or her competence to practice in that field.~~

~~(2) **"Distant site"** means the site where the specialty physician/practitioner providing the professional service is located at the time the service is provided via audio/video telecommunications.~~

~~(3) **"Interactive telecommunications"** means multimedia communications equipment that includes, at a minimum, audio/video equipment permitting two-way, real-time or near real-time service or consultation between the member and the practitioner.~~

~~(4) **"Originating site"** means the location of the SoonerCare member at the time the service is being performed by a contracted provider via audio/video telecommunications.~~

~~(5) **"Rural area"** means a county with a population of less than 50,000 people.~~

~~(6) **"Store and forward"** means the asynchronous transmission of medical information to be reviewed at a later time. A camera or similar device records (stores) an image(s) that is then sent (forwarded) via telecommunications media to another location for later viewing. The sending of x-rays, computed tomography scans, or magnetic resonance images are common store and forward applications. The original image may be recorded and/or forwarded in digital or analog format and may include video "clips" such as ultrasound examinations, where the series of images that are sent may show full motion when reviewed at the receiving location.~~

~~(7) **"Telehealth"** means the use of telecommunication technologies for clinical care (telemedicine), patient teaching and home health, health professional education (distance learning), administrative and program planning, and other diverse aspects of a health care delivery system.~~

~~(8) **"Telemedicine"** means the practice of health care delivery, diagnosis, consultation and treatment and the transfer of medical data through interactive audio, video or data communications that occur in the real-time or near real-time and in the physical presence of the member.~~

~~(9) **"Telemedicine network"** means a network infrastructure, consisting of computer systems, software and communications equipment to support telemedicine services.~~

~~(c) **Coverage.** SoonerCare coverage for telemedicine technology is limited to consultations, office visits, individual psychotherapy, psychiatric diagnostic interview examinations and testing, behavioral health assessments, behavioral health service plan development, pharmacologic management, and services for medically high risk pregnancies.~~

~~(1) An interactive telecommunications system is required as a condition of coverage.~~

~~(2) Coverage for telemedicine services is limited to members in rural areas or geographic areas where there is a lack of medical specialty, psychiatric or behavioral health expertise locally. The coverage of all telemedicine services is at the discretion of OHCA.~~

~~(3) Office and outpatient visits that are conducted via telemedicine are counted toward the applicable benefit limits for these services.~~

~~(4) Authorized originating sites are:~~

~~(A) The office of a physician or practitioner;~~

~~(B) A hospital;~~

~~(C) A school;~~

~~(D) An outpatient behavioral health clinic;~~

~~(E) A critical access hospital;~~

~~(F) A rural health clinic (RHC);~~

~~(G) A federally qualified health center (FQHC); or~~

~~(H) An Indian Health Service facility, a Tribal health facility or an Urban Indian clinic (I/T/U).~~

~~(5) Authorized distant site specialty providers, excluding professionals under supervision, are contracted:~~

~~(A) Physicians;~~

~~(B) Advanced Registered Nurse Practitioners;~~

~~(C) Physicians Assistants;~~

~~(D) Genetic Counselors;~~

~~(E) Licensed Behavioral Health Professionals;~~

~~(F) Dieticians; and~~

~~(G) I/T/U's with specialty service providers as listed in (A) through (F) above.~~

~~(d) **Non-covered services.** Non-covered services include, but are not limited to:~~

~~(1) Telephone conversation;~~

~~(2) Electronic mail message;~~

~~(3) Facsimile.;~~

~~(4) Unencrypted, non-HIPAA complaint Internet-based communications;~~

~~(5) Video cell phone interactions;~~

~~(6) Outpatient surgical services;~~

~~(7) Home Health services;~~

~~(8) Well child checkups, and preventive visits;~~

~~(9) Laboratory services;~~

~~(10) Audiologist services;~~

~~(11) Care coordination services; and~~

~~(12) Physical, speech, or occupational therapy services.~~

~~(e) **Store and forward technology.** SoonerCare covers store and forward technology for applications in which, under conventional health care delivery, the medical service does not require face-to-face contact between the member and the provider. Examples include teleradiology, telepathology, fetal monitor strips, as well as physician interpretation of electrocardiogram and electroencephalogram readings that are transmitted electronically. SoonerCare does not consider these services telemedicine as defined by OHCA and will not reimburse an originating site fee for these services.~~

(~~f~~b) **Conditions.** The following conditions apply to all services rendered via telemedicine.

(1) Interactive audio and video telecommunications must be used, permitting encrypted real-time communication between the ~~distant site~~ physician or practitioner and the SoonerCare member. The telecommunication service must be secure and adequate to protect the confidentiality and integrity of the telemedicine information transmitted. As a condition of payment the member must ~~be physically present at the originating site and must~~actively participate in the telemedicine visit. ~~The originating site must provide pertinent medical information and/or records to the distant site provider via a secure HIPAA compliant transmission.~~

~~(2) Only telemedicine services provided utilizing an OHCA approved network are eligible for reimbursement.~~

~~(3) For SoonerCare reimbursement, telemedicine connections to rural areas must be located within Oklahoma and the health providers must be licensed in Oklahoma or practice at an I/T/U.~~

(~~4~~2) The telemedicine equipment and transmission speed and image must be technically sufficient to support the service billed. If a peripheral diagnostic scope is required to assess the member, it must provide adequate resolution or audio quality for decision making. Staff involved in the telemedicine visit need to be trained in the use of the telemedicine equipment and competent in its operation.

(~~5~~3) The medical or behavioral health related service must be provided~~ by a distant site provider that is located at an approved HIPAA compliant site, or site in compliance with HIPAA Security Standards.~~at an appropriate site for the delivery of telemedicine services.~~A telemedicine approved~~An appropriate telemedicine site is one that has the proper security measures in place~~,~~; the appropriate administrative, physical and technical safeguards should be in place that ensure the confidentiality, integrity, and security of electronic protected health information. ~~The physical environments at both the originating and distant site are clinical environments and the spaces should reflect that.~~ The location of the room for the encounter at both ends should ensure comfort, privacy, and confidentiality. Both visual and audio privacy are important, placement and selection of the rooms should consider this. ~~An appropriate certified or licensed health care professional at the originating site is required to present the member to the physician or practitioner at the distant site and remain available as clinically appropriate.~~Appropriate telemedicine equipment and networks must be used considering factors such as appropriate screen size, resolution, and security. Providers and/or members may provide or receive telemedicine services outside of Oklahoma when medically necessary.

(4) The provider must be contracted with SoonerCare and appropriately licensed for the service to be provided.

If the provider is outside of Oklahoma, the provider must comply with all laws and regulations of the provider's location, including health care and telemedicine requirements.

(~~6~~5) The health care practitioner must obtain written consent from the SoonerCare member that states ~~they agree~~he or she agrees to participate in the telemedicine-based office visit. The consent form must include a description of the risks, benefits and consequences of telemedicine and be included in the member's medical record.

(~~7~~6) If the member is a minor child, a parent/guardian must present the minor child for telemedicine services unless otherwise exempted by State or Federal law. The parent/guardian need not attend the telemedicine session unless attendance is therapeutically appropriate.

(~~8~~7) The member retains the right to withdraw at any time.

(~~9~~8) All telemedicine activities must comply with the HIPAA Security Standards, OHCA policy, and all other applicable state and federal laws and regulations.

(~~10~~9) The member has access to all transmitted medical information, with the exception of live interactive video as there is often no stored data in such encounters.

(~~11~~10) There will be no dissemination of any member images or information to other entities without written consent from the member.

(~~g~~c) **Reimbursement.**

~~(1) A facility fee will be paid to the originating site when the appropriate telemedicine facility fee code is used.~~

~~(A) Hospital outpatient: When the originating site is a hospital outpatient department, payment for the originating site facility fee will be paid according to the SoonerCare fee schedule.~~

~~(B) Hospital inpatient: For hospital inpatients, payment for the originating site facility fee will be paid outside the Diagnostic Related Group (DRG) payment.~~

~~(C) FQHCs and RHCs: The originating site facility fee for telemedicine services is not an FQHC or RHC service. When an FQHC or RHC serves as the originating site, the originating site facility fee is paid separately from the center or clinic all-inclusive rate.~~

~~(D) Facilities of the Indian Health Service, tribal facilities or Urban Indian Clinics: When an I/T/U serves as the originating site, the originating site facility fee is reimbursed outside the OMB rate.~~

~~(E) Physicians'/practitioners' offices: When the originating site is a physician's office, the originating site facility fee will be paid according to the SoonerCare fee schedule. If a provider from the originating site performs a separately identifiable service for the member on the same day as telemedicine, documentation for both services must be clearly and separately identified in the member's medical record.~~

(~~2~~1) Services provided by telemedicine must be billed with the appropriate modifier. ~~Only the portion of the telemedicine service rendered from the distant site is billed with the modifier.Coding and billing the appropriate modifier with a covered telemedicine procedure code, the distant site provider and/or practitioner certifies that the member was present at the originating site when the telemedicine service was furnished.~~

(~~3~~2) If the technical component of an X-ray, ultrasound or electrocardiogram is performed ~~at the originating site~~ during a telemedicine transmission, the technical component ~~and a telemedicine facility fee are billed by the originating site~~can be billed by the provider that provided that service. The professional component of the procedure and the appropriate visit code ~~are billed by the distant site~~should be billed by the provider that rendered that service.

~~(4) Reimbursement for telemedicine services is available only when the originating site is located in a geographic area where there is a lack of medical/psychiatric/behavioral health expertise and the distance from the originating and distant site is greater than 20 miles apart, with few exceptions. The OHCA may make an exception to this requirement based on geographic limitations and service constraints. The OHCA has discretion and the final authority to approve or deny any telemedicine services based on agency and/or SoonerCare members' needs. Services are not reimbursable when provided primarily for the convenience of the provider. Adequate documentation must be maintained as service is subject to post payment review. Post payment review may result in adjustments to payment when a telemedicine modifier is billed inappropriately or not billed when appropriate.~~

(~~5~~3) The cost of telemedicine equipment and transmission is not reimbursable by SoonerCare.

(~~h~~d) **Documentation.**

(1) Documentation must be maintained ~~at the originating and the distant locations~~ by the rendering provider to substantiate the services ~~provided~~rendered.

(2) Documentation must indicate the services were rendered via telemedicine, and the location of the ~~originating and distant sites, and which OHCA approved network was used~~services.

(3) All other SoonerCare documentation guidelines apply to the services rendered via telemedicine. Examples include but are not limited to:

(A) Chart notes;

(B) Start and stop times;

(C) Service provider's credentials; and

(D) Provider's signature.

~~(i) **Telemedicine network standards.** In order to be an approved telemedicine network, an applicant must be contracted with the OHCA and meet certain technical and privacy standards stated within the contract in order to ensure the highest quality of care. Contracted networks must complete HIPAA Security Risk and Mobile Device Analysis associated with remote access to, and offsite use of, Electronic Protected Health Information (ePHI). Networks must develop and implement risk management measures to assure the safeguard of ePHI. The OHCA has discretion and the final authority to approve or~~

~~deny any telemedicine network based on agency and/or SoonerCare members' needs.~~

~~(j) **Telemedicine provider responsibilities.** Providers must adhere to privacy standards for the confidentiality, integrity, and security of ePHI. Privacy standards include but are not limited to the following:~~

~~(1) Complying with Health Insurance Portability and Accountability Act (HIPAA) and security protection for the member in connection with the telemedicine communication and related records.~~

~~(2) Submitting a Mobile Device Security Assessment to the OHCA Provider Enrollment Unit, to assure that SoonerCare members' ePHI will not be compromised. Providers are required to attest to compliance with applicable provisions of HIPAA and submit one of the following:~~

~~(A) A completed OHCA Provider HIPAA Mobile Device Security Assessment form; or~~

~~(B) A copy of the provider's most recent HIPAA Security Assessment, mobile device section only, with any risk compromising wording redacted.~~

~~(3) Obtaining and maintaining technology used in the telemedicine communication that is compliant with privacy and security standards in HIPAA, and OHCA Provider and Network Contracts.~~

~~(4) Ensuring policies and procedures are in place to prevent a breach in privacy or exposure of patient health information or records to unauthorized persons.~~

~~(5) Maintaining clinical documentation.~~

(e) The OHCA has discretion and the final authority to approve or deny any telemedicine services based on agency and/or SoonerCare members' needs.

[OAR Docket #15-531; filed 6-12-15]

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

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Policy is revised to change the operating agency of the 1915(c), My Life, My Choice and Sooner Seniors waivers. Members will be enrolled in the ADvantage waiver and will receive the same services provided in the current waiver. All operating functions and responsibilities for each waiver will be operated by the Oklahoma Department of Human Services. The state has decided not to pursue the relinquishment of the Medically Fragile waiver.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 3. GENERAL PROVIDER POLICIES

PART 3. GENERAL MEDICAL PROGRAM INFORMATION

317:30-3-39. Home and Community Based Services Waivers

The Oklahoma Health Care Authority operates or oversees the operation of several Home and Community Based Services waivers. The waivers allow individuals with physical or intellectual disabilities, requiring institutional level of care, the opportunity to reside at home or in a community based setting, while receiving institutional level of care services. Brief summaries of the Waivers are set forth in OAC 317:30-3-40 and OAC 317:30-3-41. Detailed information about each Waiver is available per the following citations:

(1) Home and Community Based Services Waivers for People with Intellectual Disabilities ~~(Mental Retardation)~~ and Related Conditions can be found at OAC 317:40-1-1 et seq.

(2) Home and Community Based Services Waivers for People with Physical Disabilities:

(A) ADvantage Waiver information is available per OAC 317:30-5-760 et seq.

(B) Medically Fragile Waiver information is available per OAC 317:50-1-1 et seq.

~~(C) My Life, My Choice Waiver information is available per OAC 317:50-3-1 et seq.~~

~~(D) Sooner Seniors Waiver information is available per OAC 317:50-5-1 et seq.~~

317:30-3-41. Home and Community Based Services Waivers for persons with physical disabilities

(a) **ADvantage Waiver.** The ADvantage Waiver Program is a Medicaid Home and Community Based Services (HCBS) Waiver used to finance ~~noninstitutional~~non-institutional long-term care services through Oklahoma's SoonerCare program for elderly and disabled individuals in specific waiver areas. To receive ADvantage Program services, individuals must meet the nursing facility level of care criteria, be age 65 years or older, or age 21 or older if disabled. ADvantage Program members must be SoonerCare eligible and reside in the designated service area. The number of members in the ADvantage Waiver is limited.

(b) **Medically Fragile Waiver.** The Medically Fragile Waiver Program is a Medicaid Home and Community Based Services (HCBS) Waiver used to finance non-institutional long-term care services through Oklahoma's SoonerCare program for medically fragile individuals. To receive Medically Fragile Program services, individuals must be at least 19 years of age, be SoonerCare eligible, and meet the OHCA skilled nursing facility (SNF) or hospital level of care (LOC) criteria. Eligibility does not guarantee placement in the program as Waiver membership is limited.

~~(c) **My Life My Choice Waiver.** The My Life, My Choice Waiver Program is a Medicaid Home and Community Based Services (HCBS) Waiver used to finance non-institutional long-term care services through Oklahoma's SoonerCare program for a targeted group of physically disabled individuals. The Waiver allows the OHCA to offer certain Home and Community Based services to an annually capped number of persons who without such services would be institutionalized. To be considered for My Life, My Choice Waiver Program services, individuals must be 20 to 64 years of age, be physically disabled and have transitioned to a home and community based setting through the Living Choice Program.~~

~~(d) **Sooner Seniors Waiver.** The Sooner Seniors Waiver Program is a Medicaid Home and Community Based Services (HCBS) Waiver used to finance non-institutional long-term care services through Oklahoma's SoonerCare program for a targeted group of elderly individuals. The Waiver allows the OHCA to offer certain Home and Community Based services to an annually capped number of persons who without such services would be institutionalized. To be considered for Sooner Seniors Waiver Program services, individuals must be 65 years of age or older, have a clinically documented, progressive degenerative disease process that responds to treatment and requires Sooner Seniors Waiver services to maintain the treatment regimen. Individuals who qualify for the Sooner Seniors Waiver must have transitioned to a home and community based setting through the Living Choice Program.~~

[OAR Docket #15-511; filed 6-12-15]

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

[OAR Docket #15-490]

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317:30-3-65.7 [AMENDED]
Subchapter 5. Individual Providers and Specialties
Part 45. Optometrists
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Rules are amended to limit the number of payment for glasses to two per year. Any additional glasses beyond this limit must be prior authorized and determined to be medically necessary.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S.,

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SUBCHAPTER 3. GENERAL PROVIDER POLICIES

PART 3. GENERAL MEDICAL PROGRAM INFORMATION

317:30-3-57. General SoonerCare coverage - categorically needy

The following are general SoonerCare coverage guidelines for the categorically needy:

(1) Inpatient hospital services other than those provided in an institution for mental diseases.

(A) Adult coverage for inpatient hospital stays as described at OAC 317:30-5-41.

(B) Coverage for members under 21 years of age is not limited. All admissions must be medically necessary. All psychiatric admissions require prior authorization for an approved length of stay.

(2) Emergency department services.

(3) Dialysis in an outpatient hospital or free standing dialysis facility.

(4) Outpatient therapeutic radiology or chemotherapy for proven malignancies or opportunistic infections.

(5) Outpatient surgical services - facility payment for selected outpatient surgical procedures to hospitals which have a contract with OHCA.

(6) Outpatient Mental Health Services for medical and remedial care including services provided on an outpatient basis by certified hospital based facilities that are also qualified mental health clinics.

(7) Rural health clinic services and other ambulatory services furnished by rural health clinic.

(8) Optometrists' services - only as listed in Subchapter 5, Part 45, Optometrist specific rules of this Chapter.

(9) Maternity Clinic Services.

(10) Outpatient diagnostic x-rays and lab services. Other outpatient services provided to adults, not specifically addressed, are covered only when prior authorized by the agency's Medical Authorization Unit.

(11) Medically necessary screening mammography. Additional follow-up mammograms are covered when medically necessary.

(12) Nursing facility services (other than services in an institution for tuberculosis or mental diseases).

(13) Early and Periodic Screening, Diagnosis and Treatment Services (EPSDT) are available for members under 21 years of age to provide access to regularly scheduled examinations and evaluations of the general physical and mental health, growth, development, and nutritional status of infants, children, and youth. Federal regulations also require that diagnosis and treatment be provided for conditions identified during a screening whether or not they are covered under the State Plan, as long as federal funds are available for these services. These services must be necessary to ameliorate or correct defects and physical or mental illnesses or conditions and require prior authorization. EPSDT/OHCA Child Health services are outlined in OAC 317:30-3-65.2 through 317:30-3-65.4.

(A) Child health screening examinations for eligible children by a medical or osteopathic physician, physician assistant, or advanced practice nurse practitioner.

(B) Diagnostic x-rays, lab, and/or injections when prescribed by a provider.

(C) Immunizations.

(D) Outpatient care.

(E) Dental services as outlined in OAC 317:30-3-65.8.

(F) Optometrists' services. The EPSDT periodicity schedule provides for at least one visual screening and glasses each 12 months. In addition, payment is made for glasses for children with congenital aphakia or following cataract removal. Interperiodic screenings and glasses at intervals outside the periodicity schedule for optometrists are allowed when a visual condition is suspected. Payment is limited to two glasses per year. Any glasses beyond this limit must be prior authorized and determined to be medically necessary.

(G) Hearing services as outlined in OAC 317:30-3-65.9.

(H) Prescribed drugs.

(I) Outpatient Psychological services as outlined in OAC 317:30-5-275 through OAC 317:30-5-278.

(J) Inpatient Psychotherapy services and psychological testing as outlined in OAC 317:30-5-95 through OAC 317:30-5-97.

(K) Transportation. Provided when necessary in connection with examination or treatment when not otherwise available.

(L) Inpatient hospital services.

(M) Medical supplies, equipment, appliances and prosthetic devices beyond the normal scope of SoonerCare.

(N) EPSDT services furnished in a qualified child health center.

(14) Family planning services and supplies for members of child-bearing age, including counseling, insertion of intrauterine device, implantation of subdermal contraceptive device, and sterilization for members 21 years of age and older who are legally competent, not institutionalized and have signed the "Consent Form" at least 30 days prior to procedure. Reversal of sterilization procedures for the purposes of conception is not covered. Reversal of sterilization procedures are covered when medically indicated and substantiating documentation is attached to the claim.

(15) Physicians' services whether furnished in the office, the member's home, a hospital, a nursing facility, ~~ICF/MR~~ICF/IID, or elsewhere. For adults, payment is made for compensable hospital days described at OAC 317:30-5-41. Office visits for adults are limited to four

per month except when in connection with conditions as specified in OAC 317:30-5-9(b).

(16) Medical care and any other type of remedial care recognized under State law, furnished by licensed practitioners within the scope of their practice as defined by State law. See applicable provider section for limitations to covered services for:

(A) Podiatrists' services
(B) Optometrists' services
(C) Psychologists' services
(D) Certified Registered Nurse Anesthetists
(E) Certified Nurse Midwives
(F) Advanced Practice Nurses
(G) Anesthesiologist Assistants

(17) Free-standing ambulatory surgery centers.

(18) Prescribed drugs not to exceed a total of six prescriptions with a limit of two brand name prescriptions per month. Exceptions to the six prescription limit are:

(A) unlimited medically necessary monthly prescriptions for:

(i) members under the age of 21 years; and
(ii) residents of Nursing Facilities or Intermediate Care Facilities for ~~the Mentally Retarded~~Individuals with Intellectual Disabilities.

(B) seven medically necessary generic prescriptions per month in addition to the six covered under the State Plan are allowed for adults receiving services under the 1915(c) Home and Community Based Services Waivers. These additional medically necessary prescriptions beyond the two brand name or thirteen total prescriptions are covered with prior authorization.

(19) Rental and/or purchase of durable medical equipment.

(20) Adaptive equipment, when prior authorized, for members residing in private ~~ICF/MR's~~ICF/IID's.

(21) Dental services for members residing in private ~~ICF/MR's~~ICF/IID's in accordance with the scope of dental services for members under age 21.

(22) Prosthetic devices limited to catheters and catheter accessories, colostomy and urostomy bags and accessories, tracheostomy accessories, nerve stimulators, hyperalimentation and accessories, home dialysis equipment and supplies, external breast prostheses and support accessories, oxygen/oxygen concentrator equipment and supplies, respirator or ventilator equipment and supplies, and those devices inserted during the course of a surgical procedure.

(23) Standard medical supplies.

(24) Eyeglasses under EPSDT for members under age 21. Payment is also made for glasses for children with congenital aphakia or following cataract removal. Payment is limited to two glasses per year. Any glasses beyond this limit must be prior authorized and determined to be medically necessary.

(25) Blood and blood fractions for members when administered on an outpatient basis.

(26) Inpatient services for members age 65 or older in institutions for mental diseases, limited to those members whose Medicare, Part A benefits are exhausted for this particular service and/or those members who are not eligible for Medicare services.

(27) Nursing facility services, limited to members preauthorized and approved by OHCA for such care.

(28) Inpatient psychiatric facility admissions for members under 21 are limited to an approved length of stay effective July 1, 1992, with provision for requests for extensions.

(29) Transportation and subsistence (room and board) to and from providers of medical services to meet member's needs (ambulance or bus, etc.), to obtain medical treatment.

(30) Extended services for pregnant women including all pregnancy-related and postpartum services to continue to be provided, as though the women were pregnant, for 60 days after the pregnancy ends, beginning on the last date of pregnancy.

(31) Nursing facility services for members under 21 years of age.

(32) Personal care in a member's home, prescribed in accordance with a plan of treatment and rendered by a qualified person under supervision of a R.N.

(33) Part A deductible and Part B Medicare Coinsurance and/or deductible.

(34) Home and Community Based Waiver Services for the intellectually disabled.

(35) Home health services limited to 36 visits per year and standard supplies for 1 month in a 12-month period. The visits are limited to any combination of Registered Nurse and nurse aide visits, not to exceed 36 per year.

(36) Medically necessary solid organ and bone marrow/stem cell transplantation services for children and adults are covered services based upon the conditions listed in (A)-(D) of this paragraph:

(A) Transplant procedures, except kidney and cornea, must be prior authorized to be compensable.

(B) To be prior authorized all procedures are reviewed based on appropriate medical criteria.

(C) To be compensable under the SoonerCare program, all transplants must be performed at a facility which meets the requirements contained in Section 1138 of the Social Security Act.

(D) Finally, procedures considered experimental or investigational are not covered.

(37) Home and community-based waiver services for intellectually disabled members who were determined to be inappropriately placed in a NF (Alternative Disposition Plan - ADP).

(38) Case Management services for the chronically and/or severely mentally ill.

(39) Emergency medical services including emergency labor and delivery for illegal or ineligible aliens.

(40) Services delivered in Federally Qualified Health Centers. Payment is made on an encounter basis.

(41) Early Intervention services for children ages 0-3.

(42) Residential Behavior Management in therapeutic foster care setting.
(43) Birthing center services.
(44) Case management services through the Oklahoma Department of Mental Health and Substance Abuse Services.
(45) Home and Community-Based Waiver services for aged or physically disabled members.
(46) Outpatient ambulatory services for members infected with tuberculosis.
(47) Smoking and Tobacco Use Cessation Counseling for children and adults.
(48) Services delivered to American Indians/Alaskan Natives in I/T/Us. Payment is made on an encounter basis.
(49) OHCA contracts with designated agents to provide disease state management for individuals diagnosed with certain chronic conditions. Disease state management treatments are based on protocols developed using evidence-based guidelines.

PART 4. EARLY AND PERIODIC SCREENING, DIAGNOSIS AND TREATMENT (EPSDT) PROGRAM/CHILD HEALTH SERVICES

317:30-3-65.7. Vision services

(a) At a minimum, vision services include diagnosis and treatment for defects in vision, including eyeglasses once each 12 months. In addition, payment is made for glasses for children with congenital aphakia or following cataract removal (refer to OAC 317:30-5-2(b)(5) for amount, duration, and scope). Payment is limited to two glasses per year. Any glasses beyond this limit must be prior authorized and determined to be medically necessary. The following schedule outlines the services required for vision services adopted by the OHCA.

(1) Each newborn should have an assessment of the anatomy of the lids, alignment of the eyes and clarity of the ocular media with particular attention to documenting the presence of a normal red reflex. The history should document either a normal birth or other condition such as prematurity.
(2) Red reflex and external appearance should be repeated and recorded on infants between one and four months of age.
(3) At six months of age, repeat red reflex and external exam and add an evaluation of ocular alignment with a corneal light reflex test.
(4) One screen should occur between nine and 12 months to mirror the six month screening.
(5) One screening from age three to five including alignment and an acuity test e.g., Allen Cards, Snellen chart or HOTV Test in each eye.
(6) Objective visual acuity testing should be provided at ages five through ten, and once during ages 11 through 18. All other years are subjective by history.

(b) Interperiodic vision examinations are allowed at intervals outside the periodicity schedule when a vision condition is suspected.

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 45. OPTOMETRISTS

317:30-5-432.1. Corrective lenses and optical supplies

(a) Payment will be made for children for lenses, frames, low vision aids and certain tints when medically necessary including to protect children with monocular vision. Coverage includes one set of lenses and frames per year. Payment is limited to two glasses per year. Any glasses beyond this limit must be prior authorized and determined to be medically necessary.
(b) Corrective lenses must be based on medical need. Medical need includes a change in prescription or replacement due to normal lens wear.
(c) SoonerCare provides frames when medically necessary. Frames are expected to last at least one year and must be reusable. If a lens prescription changes, the same frame must be used if possible. Payment for frames includes the dispensing fee.
(d) SoonerCare reimbursement for frames or lenses represents payment in full. No difference can be collected from the patient, family or guardians.
(e) Replacement of or additional lenses and frames are allowed when medically necessary. Prior authorization is not required~~;~~ unless the number of glasses exceeds two per year.~~however,the~~The provider must always document in the patient record the reason for the replacement or additional eyeglasses. The OHCA or its designated agent will conduct ongoing monitoring of replacement frequencies to ensure guidelines are followed. Payment adjustments will be made on claims not meeting these requirements.
(f) Bifocal lenses for the treatment of accommodative esotropia are a covered benefit. Progressive lenses, trifocals, photochromic lenses and tints for children require prior authorization and medical necessity. Polycarbonate lenses are covered for children when medically necessary. Payment is limited to two glasses per year. Any glasses beyond this limit must be prior authorized and determined to be medically necessary.
(g) Progressive lenses, aspheric lenses, tints, coatings and photochromic lenses for adults are not compensable and may be billed to the patient.
(h) Replacement of lenses and frames due to abuse and neglect by the member is not covered.
(i) Bandage contact lenses are a covered benefit for adults and children. Contact lenses for medically necessary treatment of conditions such as aphakia, keratoconus, following

keratoplasty, aniseikonia/anisometropia or albinism are a covered benefit for adults and children. Other contact lenses for children require prior authorization and medical necessity.

[OAR Docket #15-490; filed 6-12-15]

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

[OAR Docket #15-532]

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RULES:
Subchapter 3. General Provider Policies
Part 3. General Medical Program Information
317:30-3-64 [AMENDED]
Subchapter 5. Individual Providers and Specialties
Part 32. SoonerRide Non-Emergency Transportation
317:30-5-327 [AMENDED]
317:30-5-327.1 [AMENDED]
317:30-5-327.3 [AMENDED]
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ANALYSIS:
Non-emergency transportation rules are revised to clarify eligibility and coverage criterion.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 3. GENERAL PROVIDER POLICIES

PART 3. GENERAL MEDICAL PROGRAM INFORMATION

317:30-3-64. Payment for lodging and meals

(a) Payment for lodging and/or meals assistance for an eligible member and/or an approved medical escort is provided only when medically necessary in connection with transportation to and from SoonerCare compensable services. The member and/or medical escort must make a reasonable effort to secure lodging at a hospital or non-profit organization. The Oklahoma Health Care Authority (OHCA) has discretion and final authority to approve or deny any lodging and/or meal services.

(1) Lodging and/or meals are reimbursable when prior approved. Payment for lodging and/or meals is limited to a period of up to 24 hours prior to the start of member's medical services and up to 24 hours after the services end. Lodging is approved for the member and/or one approved medical escort. The following factors may be considered by the OHCA when approving reimbursement for a member and/or one medical escort:

(A) travel is to obtain specialty care; and

(B) the trip cannot be completed during SoonerRide operating hours; and/or

(C) the trip is 100 miles or more from the member's residence, as listed in the OHCA system, to the medical facility; and/or

(D) the member's medical treatment requires an overnight stay, or the condition of the member discourages traveling.

(2) When a member is not required to have a PCP or when a PCP referral is not required to obtain a SoonerCare covered service, a member may go to any provider they choose but SoonerCare will not reimburse for transportation, lodging, or meals if the distance is beyond what is considered the nearest appropriate facility.

(3) ~~Meals will be reimbursed only if lodging criteria is met.~~Meals will be reimbursed if lodging criteria is met. Duration of the trip must be 18 hours or greater.

(4) Reimbursement for meals is based on a daily per diem and may be used for breakfast, lunch or dinner, or all three meals, whichever is required.

(5) During inpatient or outpatient medical stays, lodging and/or meals services are reimbursed for a period of up to 14 days without prior approval; stays exceeding the 14 day period must be prior approved. A member may not receive reimbursement for lodging and/or meals services for days the member is an inpatient in a hospital or medical facility.

(6) For eligible members in the Neonatal Intensive Care Unit (NICU) a minimum visitation of 6 hours per day for the approved medical escort is required for reimbursement of lodging and/or meals services. Non-emergency transportation services for medically necessary visitation may be provided for eligible medical escorts.

(b) Lodging must be with a SoonerCare contracted Room and Board provider, when available, before direct reimbursement to a member and/or medical escort can be approved. If lodging and/or meals assistance with contracted Room and

Board providers are not available, the member and/or medical escort may request reimbursement assistance by submitting the appropriate travel reimbursement forms. The travel reimbursement forms may be obtained by contacting SoonerCare Care Management division. Any lodging and/or meal expenses claimed on the travel reimbursement forms must be documented with the required receipts and medical records to document the lodging criteria have been met. Reimbursement must not exceed state per diem amounts. The OHCA has discretion and the final authority to approve or deny lodging and/or meals reimbursement.

(c) Payment for transportation and lodging and/or meals of one medical escort may be approved if the service is required.

(d) If the Oklahoma Department of Human Services (OKDHS) removes a child from his/her home, a court must appoint a temporary guardian. During this time the temporary guardian is eligible for medical escort related lodging and/or meals services. ~~The custodial parent, if under investigation, is not eligible.~~ It is the responsibility of the OHCA to determine this necessity. The decision should be based on the following circumstances:

(1) when the individual's health or disability does not permit traveling alone; and

(2) when the individual seeking medical services is a minor child.

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 32. SOONERRIDE NON-EMERGENCY TRANSPORTATION

317:30-5-327. Eligibility for SoonerRide NET

Transportation is provided when medically necessary in connection with examination and treatment to the nearest appropriate facility in accordance with 42 CFR 440.170. As the Medicaid Agency, the Oklahoma Health Care Authority (OHCA) is the payer of last resort, with few exceptions. When other resources are available, those resources must first be utilized. Exceptions to this policy are those receiving medical treatment through Indian Health Services and those eligible for the Crime Victims Compensation Act. Individuals considered fully dual eligible qualify for SoonerRide. However, SoonerRide excludes those individuals who are categorized as:

(1) Qualified Medicare Beneficiaries(QMB);

(2) Specified Low Income Medicare Beneficiaries (SLMB) only;

(3) Qualifying Individuals-1 and individuals who are in an institution for mental disease (IMD);

(4) inpatient;

(5) institutionalized~~(i.e. long-term care facility)~~;

(6) Home and Community Based Waiver members, with the exception of the In-home Supports Waiver for Children, the Advantage Waiver, the Living Choice demonstration, ~~the Sooner Seniors Waiver, the My Life; My Choice Waiver~~ and the Medically Fragile Waiver.

317:30-5-327.1. SoonerRide NET Coverage

(a) SoonerRide NET is available for SoonerCare covered admission and discharge into inpatient hospital care, outpatient hospital care, services from physicians/approved practitioners, diagnostic services, clinic services, pharmacy services, eye care and dental care under the following conditions:

(1) Transportation is to the nearest appropriate facility or medical provider capable of providing the necessary services.

(A) The nearest appropriate facility or provider is not considered appropriate if the member's condition requires a higher level of care or specialized services available at the more distant facility. However, a legal impediment barring a member's admission would mean that the institution did not have "appropriate facilities". For example, the nearest transplant center may be in another state and that state's law precludes admission of nonresidents.

(B) The nearest appropriate facility is not considered appropriate if no bed or provider is available. However, the medical records must be properly documented.

(C) Services should be available within 45 miles of the members' residence with exceptions. The OHCA has discretion and the final authority to approve or deny travel greater than 45 miles to access services.

(i) Members seeking self-referred services are limited to the 45 mile radius.

(ii) Native Americans seeking services at a tribal or I.H.S facility may be transported to any facility within a 45 mile radius equipped for their medical needs with exceptions. Trips to out-of-state facilities require prior approval.

~~(iii) Veterans may be transported to the nearest Veterans Affairs (VA) facility equipped for their medical needs. Trips to out-of state VA facilities require prior approval.~~

(~~iv~~iii) Duals may be transported to any facility within a 45 mile radius equipped for their medical needs with exceptions. Trips to out-of-state facilities require prior approval.

(2) The service provided must be a SoonerCare covered service provided by a medical provider who is enrolled in the SoonerCare program; and

(3) Services requiring prior authorization must have been authorized (e.g. travel that exceeds the 45 mile radius, out-of-state travel, meals and lodging services).

(b) SoonerRide NET is available on a statewide basis to all eligible members.

(c) SoonerRide NET may also be provided for eligible members to providers other than SoonerCare providers if the transportation is to access medically necessary services covered by SoonerCare.

(d) SoonerRide NET is available if a member is being discharged from a facility to their home. The facility is responsible for scheduling the transportation.

(e) In documented medically necessary instances, a medical escort may accompany the member.

(1) SoonerRide NET is not required to transport any additional individuals other than the one approved individual providing the escort services. In the event that additional individuals request transportation, the SoonerRide broker may charge those family members according to the SoonerRide broker's policies which have been approved by the OHCA.

(2) A medical escort is not eligible for direct compensation by the SoonerRide broker or SoonerCare.

[OAR Docket #15-532; filed 6-12-15]

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

[OAR Docket #15-517]

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Rules are added to regulate allergy testing and immunotherapy services. Current policy does not specify controls on these services other than general medical necessity.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 1. PHYSICIANS

317:30-5-14. Injections

(a) Coverage for injections is limited to those categories of drugs included in the vendor drug program for SoonerCare. SoonerCare payment is not available for injectable drugs whose manufacturers have not entered into a drug rebate agreement with the Centers for Medicare and Medicaid Services (CMS). OHCA administers and maintains an open formulary subject to the provisions of Title 42, United States Code (U.S.C.), Section 1396r-8. The OHCA covers a drug that has been approved by the Food and Drug Administration (FDA) subject to the exclusions and limitations provided in OAC 317:30-5-72.1.

(1) **Immunizations for children.** An administration fee will be paid for vaccines administered by providers participating in the Vaccines for Children Program. For vaccines administered as part of the Vaccines for Children Program, only one administration fee is permitted per vaccine, regardless of the number of vaccine/toxoid components in the vaccine. Payment will not be made for vaccines covered by the Vaccines for Children Program. When the vaccine is not included in the program, the administration fee is separately payable.

(2) **Immunizations for adults.** Coverage for adults is provided as per the Advisory Committee on Immunization Practices (ACIP) guidelines. A separate payment will be made for the administration of a vaccine. Only one administration fee per vaccine is permitted, regardless of the number of vaccine/toxoid components in the vaccine.

(b) Providers must use the appropriate HCPCS code and National Drug Code (NDC). In addition to the NDC and HCPCS code, claims must contain the drug name, strength, and dosage amount.

~~(c) Payment is made for allergy injections for adults and children. When the contracted provider actually administers or supervises the administration of the injection, the administration fee is compensable. No payment is made for administration when the allergy antigen is self administered by the member. When the allergy antigen is purchased by the physician, payment is made by invoice attached to the claim.~~

(~~d~~c) Rabies vaccine, Imovax, Human Diploid and Hyperab, Rabies Immune Globulin are covered under the vendor drug program and may be covered as one of the covered prescriptions per month. Payment can be made separately to the physician for administration. If the vaccine is purchased by the physician, payment is made by invoice attached to the claim.

(~~e~~d) Human Papillomavirus (HPV) vaccine is approved and covered under guidelines established by the ACIP for children and adults. Payment can be made separately to the physician for administration and the vaccine product.

(~~f~~e) Trigger point injections (TPI's) are covered using appropriate CPT codes. Modifiers are not allowed for this code. Payment is made for up to three injections (3 units) per day at

the full allowable. Payment is limited to 12 units per month. The medical records must clearly state the reasons why any TPI services were medically necessary. All trigger point records must contain proper documents and be available for review. Any services beyond 12 units per month or 36 units per 12 months will require mandatory review for medical necessity. Medical records must be automatically submitted with any claims for services beyond 36 units.

(~~g~~f) If a physician bills separately for surgical injections and identifies the drugs used in a joint injection, payment will be made for the cost of the drug in addition to the surgical injection. The same guidelines apply to aspirations.

(~~h~~g) When IV administration in a Nursing Facility is filed by a physician, payment may be made for medication. Administration should be done by nursing home personnel.

(~~i~~h) Intravenous fluids used in the administration of IV drugs are covered. Payment for the set is included in the office visit reimbursement.

(~~j~~i) In the event a pandemic virus is declared by the Centers for Disease Control (CDC) and/or the Department of Health & Human Services, an administration fee will be paid to providers for administering the pandemic virus vaccine to adults and children as authorized by the Centers for Medicare and Medicaid Services (CMS).

317:30-5-14.1. Allergy services

(a) **Allergy testing.** Allergy testing is the process of identifying allergen(s) that may cause an allergic or anaphylactic reaction and the degree of the reaction. By identifying the allergen(s), the member can avoid exposures and the allergic reaction can be managed appropriately. Treatment options for allergies are avoidance of the allergen(s), pharmacological therapy, and/or immunotherapy. OHCA may consider allergy testing medically necessary when a complete medical, immunological history, and physical examination is performed and indicates symptoms are suggestive of a chronic allergy. Allergy testing may also be determined medically necessary if diagnosis indicates an allergy and simple medical treatment and avoidance of the allergen(s) were tried and showed inadequate response.

(1) **Coverage.** OHCA will provide reimbursement for allergy testing when the following conditions are met:

(A) Testing is done in a hospital or providers office under direct supervision of an eligible provider;

(B) The diagnostic testing is based on the member's immunologic history and physical examination, which document that the antigen(s) being used for testing have a reasonable probability of exposure in the members environment;

(C) The member has significant life-threatening symptomatology or a chronic allergic state (e.g., asthma) which has not responded to conservative measures;

(D) The member's records document the need for allergy testing and the justification for the number of tests performed;

(E) The complete report of the test results, as well as controls, will be kept as part of the medical record; and

(F) The member is observed for a minimum of 20 minutes following allergy testing to monitor for signs of allergic or anaphylactic reactions.

(2) **Provider requirements.** Only contracted providers (a physician (MD or DO), physician's assistant, or advanced practice nurse) who are board certified or board eligible in allergy and immunology or have received training in allergy and immunology in an accredited academic institution for a minimum of one month clinical rotation (authenticated by supporting letter from institution or mentor).

(A) Follow-up administration of medically indicated allergy immunotherapy can be done by a practitioner other than an allergist.

(B) Allergy testing and/or immunotherapy for SoonerCare members younger than five years of age preferably should be performed by an allergy specialist.

(3) **Description of services.** There are a variety of tests to identify the allergen(s) that may be responsible for the member's allergic response. OHCA covers the following allergy test(s) for SoonerCare members:

(A) Direct skin tests:

(i) Percutaneous (i.e., scratch, prick, or puncture) tests are performed for inhalant allergies, suspected food allergies, hymenoptera allergies, or specific drug allergies.

(ii) Intra-cutaneous (i.e., intradermal) tests are performed commonly when a significant allergic history is obtained and results of the percutaneous test are negative or equivocal.

(B) Patch or application tests;

(C) Photo or photo patch skin tests;

(D) Inhalant bronchial challenge testing (not including necessary pulmonary function tests);

(E) Ingestion challenge tests (this test is used to confirm an allergy to a food or food additives); and

(F) Double-blind food challenge testing.

(G) Ophthalmic mucous membrane or direct nasal membrane tests, serum allergy tests, serial dilution endpoint tests, or any unlisted allergy procedure not stated above will require prior authorization.

(4) **Reimbursement.** Reimbursement for allergy testing is limited to a total of 60 tests every three years. Repeat allergy testing for the same allergen(s) within three years will require prior authorization. Any service related to allergy testing beyond predetermined limits must be submitted with the appropriate documentation to OHCA for prior authorization consideration.

(5) **Non-covered services.** OHCA does not cover allergy testing determined to be investigational or experimental in nature.

(b) **Allergy immunotherapy.** Allergy immunotherapy involves administration of allergenic extracts at periodic intervals, with the goal of reducing symptoms, including titrating

to a dosage that is maintained as maintenance therapy. Allergy immunotherapy is initiated once the offending allergen(s) has been identified through exposure and/or allergy testing. The documented allergy should correspond to the allergen planned for immunotherapy. OHCA may consider allergy immunotherapy medically necessary for members who have significant life-threatening symptomology or a chronic allergic state that cannot be managed by medication, avoidance, or environmental control measures. Before beginning allergy immunotherapy, consideration must be given to other common medical conditions that could make allergy immunotherapy more risky.

(1) **Coverage requirements.** Allergy immunotherapy is covered when the following criteria are met and documented in the medical record:

(A) The member has allergic asthma, or

(B) Allergic rhinitis and/or conjunctivitis, or

(C) Life-threatening allergy to hymenoptera (stinging insect allergy), or

(D) There is clinical evidence of an inhalant allergen(s) sensitivity; and

(E) Documentation supports that the member's symptoms are not controlled with medications and avoidance of the allergen(s) are impractical.

(2) **Provider qualifications.** See OAC 317:30-5-14.1(A)(2) for provider qualifications.

(3) **Administering sites.** Allergy immunotherapy should be administered in a medical facility with trained staff and proper medical equipment available in the case of significant reaction. Should home administration be necessary, the following requirements must be met:

(A) Adequate documentation must be present in the member's record indicating why home administration is medically necessary;

(B) Documentation must indicate the member and/or family member have been properly trained in recognizing and treating anaphylactic and/or allergic reactions to allergy immunotherapy administration;

(C) Epinephrine kits must be available to the member and the family and the member and/or family have been instructed in its use;

(D) Documentation of member and/or family member having been properly trained in antigen(s) dosing plan, withdrawing of correct amount of antigen(s) from the vial and administration of allergy immunotherapy;

(E) The signed consent by the member or family member to administer allergy immunotherapy at home;

(F) The provider initiated allergy immunotherapy in their office and is planning to continue therapy at the member's home; and

(G) Signed acknowledgement by the member or family member of receiving antigen vial(s) as per treatment protocol.

(4) **Treatment period.** A "treatment period" is generally 90 days, and adequate documentation must be available for continuation of therapy after each treatment period. The length of allergy immunotherapy treatment depends on the demonstrated clinical efficacy of the treatment.

(5) **Reimbursement.** Payment is made for the administration of allergy injections as well as supervision and provision of antigen(s) for adults and children, with the following considerations:

(A) When a contracted provider actually administers or supervises administration of the allergy injections, the administration fee is compensable;

(B) Reimbursement for the administration only codes is limited to one per member, per day;

(C) No reimbursement is made for administration of allergy injections when the allergy injection is self-administered by the member; and

(D) For antigens purchased by the provider for supervision, preparation and provision for allergy immunotherapy, an invoice reflecting the purchase should be made available upon request for post-payment review.

(6) **Limitations.** The following limitations and restrictions apply to immunotherapy:

(A) A presumption of failure can be assumed if, after 12 months of allergy immunotherapy, the member does not experience any signs of improvement, and all other reasonable factors have been ruled out.

(B) Documented success of allergy immunotherapy treatment is evidenced by:

(i) A noticeable decrease of hypersensitivity symptoms, or

(ii) An increase in tolerance to the offending allergen(s), or

(iii) A reduction in medication usage.

(C) Very low dose immunotherapy or continued submaximal dose has not been shown to be effective and will be denied as not medically necessary.

(D) Liquid antigen(s) prepared for sublingual administration are not covered as they have not been proven to be safe and effective.

(E) Food and Drug Administration (FDA) approved oral desensitization therapies may be covered as part of the member's pharmacy benefits and requires prior authorization.

(F) If a provider is preparing single dose vials of antigens to be administered by a different provider, member or family member, only 30 units per treatment period of 90 days with a limit of 120 units per year is allowed. Additional units above the stated limits will require prior authorization.

(G) If using multi-dose vials, there is a limitation of 10 units per vial, with a maximum of 20 units allowed per 90 day treatment period. There is a limit of 80 units allowed per year. Additional units above the stated limits will require prior authorization.

(7) **Non-covered services.** Allergy immunotherapy determined by OHCA to be investigational or experimental will not be covered.

[OAR Docket #15-517; filed 6-12-15]

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

[OAR Docket #15-501]

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n/a
ANALYSIS:
Rules are revised to reduce/deny payment for preventable readmissions that occur within 30 days from discharge.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 3. HOSPITALS

317:30-5-56. Utilization review

All inpatient services are subject to post-payment utilization review by the Oklahoma Health Care Authority, or its designated agent. These reviews will be based on OHCA's, or its designated agent's, admission criteria on severity of illness and intensity of treatment. In addition to the random sample of all admissions, retrospective review policy includes the following:

(1) Hospital stays less than three days in length will be reviewed for medical necessity and appropriateness of care. (Discharges involving healthy mother and healthy newborns may be excluded from this review requirement.) If it is determined that the inpatient stay was unnecessary or inappropriate, the prospective payment for the inpatient stay will be denied.

(2) Cases which indicate transfer from one acute care hospital to another will be monitored to help ensure that payment is not made for inappropriate transfers.

(3) Readmissions occurring within ~~15~~30 days of prior acute care admission for a related condition will be reviewed to determine medical necessity and appropriateness of care or whether the readmission was potentially preventable. If it is determined that either or both admissions were unnecessary or inappropriate or potentially preventable, payment for either or both admissions may be denied. Such review may be focused to exempt certain cases at the sole discretion of the OHCA.

[OAR Docket #15-501; filed 6-12-15]

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

[OAR Docket #15-492]

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n/a
ANALYSIS:
Rules are revoked to eliminate payment for hospital leave to nursing facilities and ICF/IIDs. Hospital leave is planned or unplanned leave when the patient is admitted to a licensed hospital.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 9. LONG TERM CARE FACILITIES

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

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

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

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

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

(4) Midnight is the time used to determine whether a patient is present or absent from the facility. The day of discharge for therapeutic leave is counted as the first day of leave, but the day of return from such leave is not counted. ~~For hospital leave, the day of hospital admission is the first day of leave. The day the patient is discharged from the hospital is not counted as a leave day.~~

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

[OAR Docket #15-492; filed 6-12-15]

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

[OAR Docket #15-494]

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ANALYSIS:
The Agency's nurse aide training program rules are revised to specify that payment for training will be directly reimbursed to qualified nurse aides

on a quarterly basis for every quarter the individual is employed in a nursing facility. Rules are also revised to establish a maximum rate for reimbursement for nurse aides who have paid for training and competency examination fees.

CONTACT PERSON:

Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 9. LONG TERM CARE FACILITIES

317:30-5-134. Nurse Aide Training Reimbursement

(a) Nurse Aide training programs and competency evaluation programs occur in two settings, a nursing facility setting and private training courses. Private training includes, but is not limited to, certified training offered at vocational technical institutions. This rule outlines payment to qualified nurse aides trained~~for training~~ in either setting.

(b) In the case a nursing facility provides training and competency evaluation in a program that is not properly certified under federal law, the Oklahoma Health Care Authority may offset the nursing facility's payment for monies paid to the facility for these programs. Such action shall occur after notification to the facility of the period of non-certification and the amount of the payment by the Oklahoma Health Care Authority.

(c) In the case of nurse aide training provided in private training courses, reimbursement is made to nurse aides who have paid a reasonable fee for training in a certified training program at the time training was received. The federal regulations prescribe applicable rules regarding certification of the program and certification occurs as a result of certification by the State Survey Agency. For nurse aides to receive reimbursement for private training courses, all of the following requirements must be met:

(1) the training and competency evaluation program must be certified at the time the training occurred;

(2) the nurse aide has paid for training;

(3) a reasonable fee was paid for training (however, reimbursement will not exceed the maximum amount set by the Oklahoma Health Care Authority of 800 dollars);

(4) the Oklahoma Health Care Authority is billed by the nurse aide receiving the training within 12 months of the completion of the training~~;~~. Reimbursement requests outside the first 12 months are not compensable;

(5) the nurse aide has passed her or his competency evaluation; and

(6) the nurse aide is employed at a SoonerCare contracted nursing facility as a nurse aide during all or part of the year after completion of the training and competency evaluation.

~~(d) If all the conditions in subsection (c) are met, then the Authority will compensate the nurse aide based upon the following pro-rata formula:~~

~~(1) For every month employed in a nursing facility, OHCA will pay 1/12 of the sum of eligible expenses incurred by the nurse aide. The term "every month" is defined as a period of 16 days or more within one month.~~

~~(2) The maximum amount paid by the Oklahoma Health Care Authority may be set by the Rates and Standards Committee. The rate paid by the nurse aide, up to the maximum set by the Oklahoma Health Care Authority, will be paid in the event a nurse aide was employed all 12 months after completion of the training program.~~

~~(e) The claimant must submit a completed Nurse Aide Training Reimbursement Program Form and ADM 12 claim voucher. Documentation of eligible expenses must also be provided. Eligible expenses include course training fees, textbooks and exam fees.~~

~~(f) No nurse aide trained in a nursing facility program that has an offer of employment or is employed by the nursing facility in any capacity at the inception of the training program may be charged for the costs associated with the nurse aide training or competency evaluation program.~~

~~(g) The SoonerCare share of Nurse Aide training and testing costs incurred by a nursing facility will be reimbursed in the following manner:~~

~~(1) Quarterly, the facilities incurring expense and requesting reimbursement for the Medicaid share of Nurse Aide Training costs will complete and file a "Nurse Aide Training and Testing Costs" report as prescribed by the OHCA. These reports will be due by the end of the subsequent month.~~

~~(2) From the "Nurse Aide Training and Testing Costs" reports the OHCA will determine a cost per day for each facility for the period.~~

~~(3) The OHCA will pay each facility based on the reported cost per day applied to the actual SoonerCare paid days that matches the period reported by the facility.~~

~~(4) Nurse Aide Training Costs are not allowable for cost reporting purposes.~~

(d) If all the conditions in subsection (c) are met, then the Authority will compensate the nurse aide on a quarterly basis. For every qualifying month employed in a nursing facility during a quarter, OHCA will pay the previous quarter's sum of eligible expenses incurred by the nurse aide. The term "qualifying month" is defined as a period of 16 days or more within one calendar month. The terms "quarter" and "quarterly basis" are defined as three qualifying months.

[OAR Docket #15-494; filed 6-12-15]

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

[OAR Docket #15-514]

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317:30-5-211.3 [AMENDED]
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317:30-5-211.5 [AMENDED]
317:30-5-211.9 [AMENDED]
317:30-5-211.10 [AMENDED]
317:30-5-211.17 [AMENDED]
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Policy is revised to update Part 17 (Medical Suppliers) in Chapter 30 to clarify rules for durable medical equipment (DME) services.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 17. MEDICAL SUPPLIERS

317:30-5-211.1. Definitions

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

"Adaptive equipment" means devices, aids, controls, appliances or supplies of either a communication or adaptive type, determined necessary to enable the person to increase his or her ability to function in a home and community based setting or private Intermediate Care Facilities for ~~the Mentally Retarded (ICF/MR)~~Individuals with Intellectual Disabilities (IFC/IID) with independence and safety.

"Capped rental" means monthly payments for the use of the Durable Medical Equipment (DME) for a limited period of time not to exceed 13 months. Items are considered purchased after 13 months of continuous rental.

"Certificate of medical necessity (CMN)" means a certificate required to help document the medical necessity and other coverage criteria for selected items~~, those~~. Those items are defined in this Chapter. The physician's certification must include the member's diagnosis, the reason the equipment is required, and the physician's estimate, in months, of the duration of its need.

"Customized DME" means items of DME which have been uniquely constructed or substantially modified for a specific member according to the description and orders of the member's treating physician. For instance, a wheelchair would be considered "customized" if it has been:

(A) measured, fitted, or adapted in consideration of themember's body size, disability, period of need, or intended use;

(B) assembled by a supplier or ordered from a manufacturer who makes available customized features, modifications, or components for wheelchairs; and

(C) intended for an individual member's use in accordance with instructions from the member's physician.

"Durable medical equipment (DME)"means equipment that can withstand repeated use~~, i.e.; the~~(e.g. a type of item that could normally be rented), is used to serve a medical purpose, is not useful to a person in the absence of an illness or injury, and is used in the most appropriate setting, including the home or workplace.

"Invoice" means a document that provides the following information when applicable~~;~~: the description of product, quantity, quantity in box, purchase price~~ (less any discounts, rebates or commissions received)~~, NDC, strength, dosage, provider, seller's name and address, purchaser's name and address, and date of purchase. At times, visit notes will be required to determine how much of the supply was expended. When possible, the provider should identify the SoonerCare member receiving the equipment or supply on the invoice.

""**Medical supplies"** means an article used in the cure, mitigation, treatment, prevention, or diagnosis of illnesses. Disposable medical supplies are medical supplies consumed in a single usage and do not include skin care creams or cleansers. Medical supplies do not include surgical supplies or medical or surgical equipment.

"OHCA CMN" means a certificate required to help document the medical necessity and other coverage criteria for selected items. Those items are defined in this chapter. The physician's certification must include the member's diagnosis, the reason equipment is required, and the physician's estimate, in months, of the duration of its need. This certificate is used when the OHCA requires a CMN and one has not been established by CMS.

"Orthotics" means an item used for the correction or prevention of skeletal deformities.

"Prosthetic devices" means a replacement, corrective, or supportive device (including repair and replacement parts ~~for~~of the same) worn on or in the body~~,~~ to artificially replace a missing portion of the body, prevent or correct physical deformity or malfunction, or support a weak or deformed portion of the body.

317:30-5-211.3. Prior authorization (PA)

(a) **General.** Prior authorization is the electronic or written authorization issued by OHCA to a provider prior to the provision of a service. Providers should obtain a PA before providing services.

(b) **Requirements.** Billing must follow correct coding guidelines as promulgated by CMS or per uniquely and publicly promulgated OHCA guidelines. DME claims must include the most appropriate HCPCS code as assigned by the ~~Statistical Analysis Durable Medical Equipment Regional Carrier (SADMERC)~~Medicare Pricing, Data, Analysis, and Coding (PDAC) or its successor. Authorizations for services not properly coded will be denied. **The following services require prior authorization:**

(1) services that exceed quantity/frequency limits;

(2) medical need for an item that is beyond OHCA's standards of coverage;

(3) use of a Not Otherwise Classified (NOC) code or miscellaneous codes;

(4) services for which a less costly alternative may exist; and

(5) procedures indicating that a PA is required on the OHCA fee schedule.

(c) **Prior authorization requests.** Refer to OAC 317:30-5-216.

317:30-5-211.4. Rental and/or purchase

(a) **Purchase (New or Used).** Items may be purchased if they are inexpensive accessories for other DME or the equipment itself will be used for an extended period of time. The OHCA reserves the right to determine whether items of DMEPOS will be rented or purchased.

(b) **Rental.**

(1) **Continuous rental.** Items that require regular and ongoing servicing/maintenance are rented for the duration indicated by the physician's order and medical necessity. Examples include, but are not limited to, oxygen and volume ventilators. The rental payment includes routine servicing and all necessary repairs or replacements to make the rented item functional.

(2) **Capped rental.** Items are rented until the purchase price is reached. Capped rental items may be rented for a maximum of 13 months. If the member changes suppliers during or after the 13th continuous month rental period, this does not result in a new rental period. The supplier that provides the item to the member the 13th month of rental is responsible for supplying the equipment, as well as routine maintenance and servicing after the 13th month. If used equipment is issued to the member, the usual and customary charge reported to the OHCA~~,~~ must accurately reflect that the item is used.

(c) **Converting rental to purchase.** The majority of DME can be rented as a capped rental for up to a maximum of 13 continuous months. When an item is converted to a purchase during the rental period, the provider must subtract the amount already paid for the rental item from the total purchase price.

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

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

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

(c) **Replacement.**

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

(2) Replacement parts must be billed with the appropriate HCPCS code that represents the item or part being

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

(d) **Delivery.** DMEPOS products are set with usual maximum quantities and frequency limits. Suppliers are not expected to provide these amounts routinely, nor are members required to accept DMEPOS products at frequencies or in quantities that exceed the amount the member would typically use. Suppliers must not dispense a quantity of any DMEPOS product exceeding a member's expected utilization. The reordering or refilling of DMEPOS products should always be based on actual member usage. Suppliers should stay attuned to atypical utilization patterns on behalf of their members and verify with the ordering physician that the atypical utilization is warranted. Suppliers must exercise the following guidelines in regard to the delivery of DMEPOS products:

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

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

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

317:30-5-211.9. Adaptive equipment

(a) **Residents of ~~ICF/MR~~ICF/IID facilities.** Payment is made for customized adaptive equipment for persons residing in private Intermediate Care Facilities for ~~the Mentally Retarded (ICF/MR)~~ Individuals with Intellectual Disabilities (ICF/IID). This means customized equipment or devices to assist in ambulation. Standard wheelchairs, walkers, eyeglasses, etc., would not be considered customized adaptive equipment. All customized adaptive equipment must be prescribed by a physician and requires prior authorization.

(b) **Members in home and community-based waivers.** Refer to OAC 317:40-5-100.

317:30-5-211.10. Durable medical equipment (DME)

(a) **DME.** DME includes, but is not limited to: medical supplies, orthotics and prosthetics, custom braces, therapeutic lenses, respiratory equipment, and other qualifying items when acquired from a contracted DME provider.

(b) **Certificate of medical necessity.** Certain items of DME require a CMN/OHCA CMN which should be submitted with the request for prior authorization. These items include, but are not limited to:

(1) hospital beds;
(2) support surfaces;
(3) patient lift devices;
(4) external infusions pumps;
(5) enteral and parenteral nutrition; ~~and~~
(6) Oxygen and oxygen related products; and
(~~6~~7) pneumatic compression devices.

(c) **Prior authorization.**

(1) **Rental.** Rental of hospital beds, support surfaces, oxygen and oxygen related products, continuous positive airway pressure devices (CPAP and BiPAP), pneumatic compression devices, and lifts require prior authorization and, except for CPAP and BiPAP devices, a completed CMN/OHCA CMN; medical necessity must be documented in the member's medical record, ~~and be~~ signed by the physician, and attached to the PA.

(2) **Purchase.** Equipment ~~will~~may be purchased when a member requires the equipment for an extended period of time. During the prior authorization review, the ~~PA consultant~~OHCA may change the authorization from a rental to a purchase or a purchase to a rental based on the documentation submitted. The provider must indicate whether the DME item provided is new or used.

(d) **Backup equipment.** Backup equipment is considered part of the rental cost and is not a covered service without prior authorization.

(e) **Home modification.** Equipment used for home modification is not a covered service.

317:30-5-211.17. Wheelchairs

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

(1) **"Assistive technology professional"** or **"ATP"** means a for-service provider who is involved in analysis of the needs and training of a consumer in the use of a particular assistive technology device or is involved in the sale and service of rehabilitation equipment or commercially available assistive technology products and devices.

(2) **"Custom seating system"** means a wheelchair seating system which is individually made for a member using a plaster model of the member, a computer generated model of the member (e.g., CAD-CAM technology), or the detailed measurements of the member to create either:

(A) a molded, contoured, or carved (foam or other suitable material) custom-fabricated seating system that is incorporated into the wheelchair base; or~~,~~

(B) a custom seating system made from multiple pre-fabricated components or a combination of custom fabricated materials and pre-fabricated components which have been configured and attached to the wheelchair base or incorporated into a wheelchair seat and/or back in a manner that the wheelchair could not be easily re-adapted for use by another individual.

(3) **"RESNA"** means the Rehabilitation Engineering and Assistive Technology Society of North America.

(4) **"Specialty evaluation"** means the determination and documentation of the consumer's pathology, history and prognosis, and the physiological, functional, and environmental factors that impact the selection of an appropriate wheeled mobility system.

(b) **Medical Necessity.** Medical necessity, pursuant to OAC 317:30-5-211.2, is required for a wheelchair to be covered and reimbursed by SoonerCare. Only one wheelchair is covered as medically necessary during its reasonable useful lifetime, unless the member's documented medical condition indicates the current wheelchair no longer meets the member's medical need. Backup wheelchairs are not covered items.

(c) **Prior authorization.** Prior authorization, pursuant to OAC 317:30-5-211.3, is required for ~~a wheelchair~~selected wheelchairs to be covered and reimbursed by SoonerCare. All prior authorization requests for the purchase of a wheelchair must indicate the length of the warranty period and what is covered under the warranty.

(1) Wheelchairs, wheelchair parts and accessories, and wheelchair modifications that are beneficial primarily in allowing the member to perform leisure or recreational activities are not considered medically necessary and will not be authorized.

(2) ~~Certain wheelchair~~Wheelchair parts, accessories, and/or modifications that are distinctly and separately requested and priced from the original wheelchair request may require prior authorization.

(3) The OHCA will deny prior authorization requests when the required forms have not been fully completed or the member's medical record does not provide sufficient information to establish medical necessity or to determine that the criteria for coverage has been met.

(d) **Coverage and limitations.**

(1) For a member who resides in a personal residence, assisted living facility, Intermediate Care Facility for ~~the Mentally Retarded (ICF/MR)~~Individuals with Intellectual Disabilities (ICF/IID), or long term care facility, the following criteria must be met for the authorization to purchase a wheelchair.

(A) The member must have a prescription signed by a physician, a physician assistant, or an advanced registered nurse practitioner.

(B) The member must meet the requirements for medical necessity as determined and approved by the ~~Oklahoma Health Care Authority~~OHCA.

(C) The member must either have:

(i) a specialty evaluation that was performed by a licensed or certified medical professional, such as a physical therapist, occupational therapist, or a physician who has specific training and experience in rehabilitation wheelchair evaluations, and that documents the medical necessity for the wheelchair and its special features; or

(ii) a wheelchair provided by a supplier that employs a RESNA certified assistive technology professional who specializes in wheelchairs and who has direct, in-person involvement in the wheelchair selection for the member.

(2) For members who reside in a long term care facility or ~~ICF/MR~~ICF/IID, only custom seating systems for wheelchairs are eligible for direct reimbursement to DME providers ~~of DME services~~. All standard manual and power wheelchairs are the responsibility of the facility and are considered part of the facility's per diem rate. Repairs and maintenance, except for custom seating systems, are not covered items for wheelchairs and are considered part of the facility's per diem rate.

(e) **Rental, repairs, maintenance, and delivery.** Refer to OAC 317:30-5-211.4 through 317:30-5-211.5.

(f) **Documentation.**

(1) The specialty evaluation or wheelchair selection documentation must be submitted with the prior authorization request.

(2) The specialty evaluation or wheelchair selection must be performed no longer than 90 days prior to the submission of the prior authorization request.

(3) The results of the specialty evaluation or wheelchair selection documentation must be supported by the information submitted on the member's medical record.

(4) A copy of the dated and signed written specialty evaluation or wheelchair selection document must be maintained by the wheelchair provider. The results of the specialty evaluation or wheelchair selection must be written, signed, and dated by the medical professional who evaluated the member or the ATP who was involved in the wheelchair selection for the member.

317:30-5-217. Billing

(a) **Procedure codes.** It is the supplier's responsibility to ensure that claims for the supply or equipment are submitted with the most appropriate HCPCS code as assigned by the ~~Statistical Analysis Durable Medical Equipment Regional Carrier (SADMERC)~~Medicare PDAC or its successor. When the most appropriate procedure code is not used, the claim will be denied. When a specific procedure code has not been assigned to an item, an invoice is required which must contain a full description of the equipment or supply.

(b) **Rental.** Claims for rental should indicate the first date of service and the inclusive dates of rental as part of the description of services. The appropriate modifier must be included. Only one month's rental should be entered on each detail line.

(c) **Invoice.** ~~Once~~For manually priced items, after the service has been provided, the supplier is required to include a

copy of the invoice documenting the supplier's cost of the item with the claim.

(d) **Place of service.** The appropriate indicator for the patient's place of residence must be entered.

(e) **Prescribing provider.** The name of the prescribing provider must be included for claims processing and entered in the appropriate block.

(f) **Proof of Delivery.** Items must be received by the member before billing OHCA. Proof of delivery must be retained by the provider in the member's file and provided to the OHCA upon request. In addition, for manually priced items, evidence of proof of delivery must be attached to the claim for adjudication.

317:30-5-218. Reimbursement

(a) **Medical equipment and supplies.** Reimbursement for durable medical equipment and supplies will be made using an amount derived from the lesser of the OHCA maximum allowable fee or the provider's usual and customary charge. The maximum allowable fee is the maximum amount that the OHCA will pay a provider for an allowable procedure. When a code is not assigned a maximum allowable fee for a unit of service, a fee will be established. The fee schedule will be reviewed annually and adjustments to the fee schedule may be made at any time based on efficiency, budget considerations, and quality of care as determined by the OHCA.

(b) **Oxygen equipment and supplies.**

(1) Payment for stationary oxygen systems (liquid oxygen systems, gaseous oxygen systems, and oxygen concentrators) is based on continuous rental, i.e., a continuous monthly payment that is made as long as it is medically necessary. The rental payment includes all contents and supplies, ~~i.e.,~~e.g. regulators, tubing, masks, etc. Portable oxygen systems are considered continuous rental. Ownership of the equipment remains with the supplier.

(2) Separate payment will not be made for maintenance, servicing, delivery, or for the supplier to pickup the equipment when it is no longer medically necessary.

(3) Payment for oxygen and oxygen equipment and supplies will not exceed the Medicare fee for the same procedure code. Reimbursement for members who reside in a nursing facility may be at a reduced rate. The fee schedule will be reviewed annually and adjustments to the fee schedule may be made at any time based on efficiency, budget considerations, and quality of care as determined by the OHCA.

[OAR Docket #15-514; filed 6-12-15]

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

[OAR Docket #15-503]

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317:30-5-211.12 [AMENDED]
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14-703
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INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Oxygen and oxygen equipment rules are revised to require additional authorization and criteria for service eligibility.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 17. MEDICAL SUPPLIERS

317:30-5-211.11. Oxygen and oxygen equipment

(a) **Medical necessity.** Oxygen and oxygen supplies are covered when medically necessary. Medical necessity is determined from results of arterial blood gas analysis (ABG) or pulse oximetry (SaO2) tests ~~(pO2)~~. ABG data are not required for children, but may be used if otherwise available. The test results to document Medical Necessity must be within 30 days of the date of the ~~physician's prescription. A copy of a report from an inpatient or outpatient hospital or emergency room setting will meet the requirement.~~qualified medical practitioner's Certificate of Medical Necessity. Prior authorization is required after the initial three months of billing whether qualifying tests were done at rest, during sleep, or during exercise. Appropriate documentation of ABG or SaO2 data from the member's chart should be attached to the prior authorization request (PAR).

(1) ~~For initial certification for oxygen, the ABG study or oximetry analysis used to determine medical necessity may not be performed by the DMEPOS or a related corporation. In addition, neither the study nor the analysis may be performed by a physician with a significant ownership interest in the DMEPOS performing such tests. These prohibitions include relationships through blood or marriage. A referring physician may perform the test in his/her office as part of routine member care.~~The ABG or oximetry test used to determine medical necessity must be performed by a medical professional qualified to conduct such testing. The test may not be performed or paid for by a DMEPOS supplier, or a related corporation. A referring qualified medical practitioner may perform the test in his/her office as part of routine member care.

(2) ~~Initial certification is for no more than three months. Except in the case of sleep-induced hypoxemia, ABG or oximetry is required within the third month of the initial certification period if the member has a continued need for supplemental oxygen. Re-certification will be required every 12 months.~~

~~(A) **Adults.** Initial requests for oxygen must include ABG or resting oximetry results. The arterial blood saturation can not exceed 89% at rest on room air; the pO2 level can not exceed 59mm Hg.~~

~~(B) **Children.** Requests for oxygen for children that do not meet the following requirements should include documentation of the medical necessity based on the child's clinical condition and are considered on a case by case basis. Members 20 years of age or less must meet the following requirements:~~

~~(i) birth through three years, SaO2 level equal to or less than 94%; and~~

~~(ii) ages four and above, SaO2 level equal to or less than 90%.~~In addition to ABG data, the following three tests are acceptable for determining medical necessity for oxygen prescription:

(A) At rest and awake "spot oximetry."

(B) During sleep:

(i) Overnight Sleep Oximetry done inpatient or at home.

(ii) Polysomnogram, which may be used only if medically necessary for concurrent evaluation of another condition while in a chronic stable state.

(C) During exercise with all three of the following performed in the same testing session.

(i) At rest, off oxygen showing a non-qualifying result.

(ii) During exercise, off oxygen showing a qualifying event.

(iii) During exercise, on oxygen showing improvement over test (C) ii above.

(3) Certification criteria:

(A) All qualifying testing must meet the following criteria:

(B) **Adults.** Initial requests for oxygen must include ABG or resting oximetry results. At rest and on room air, the arterial blood saturation (SaO2) cannot exceed 89% or the pO2 cannot exceed 59mm Hg.

(C) **Children.** Members 20 years of age or less must meet the following requirements:

(i) birth through three years, SaO2 equal to or less than 94%;or

(ii) ages four and above, SaO2 level equal to or less than 90%.

(iii) Requests from the qualified medical practitioner for oxygen for children who do not meet these requirements should include documentation of the medical necessity based on the child's clinical condition. These requests are considered on a case-by-case basis.

(b) **Certificate of medical necessity.**

(1) The ~~medical~~DMEPOS supplier must have a fully completed current CMN(CMS-484 or HCA-32 must be used for members 20 years of age and younger) on file to support the claims for oxygen or oxygen supplies, and to establish whether coverage criteria are met and to ensure that the oxygen services provided are consistent with the physician's prescription (refer to instructions from Palmetto Government Benefits Administration, the Oklahoma Medicare Carrier, for further requirements for completion of the CMN).

(2) ~~The CMN must be signed by the physician prior to submitting the initial claim. When a physician prescription for oxygen is renewed, a CMN, including the required retesting, must be completed by the physician prior to the submission of claims. The medical and prescription information on the CMN may be completed by a non physician clinician, or an employee of the physician for the physician's review and signature. In situations where the physician has prescribed oxygen over the phone, it is acceptable to have a cover letter containing the same information as the CMN, stating the physician's orders, as long as the CMN has been signed by the physician or as set out above.~~The CMN must be signed by the qualified medical practitioner prior to submitting the initial claim. If a verbal order containing qualifying data is received by

the DME provider, oxygen and supplies may be dispensed using the verbal order date as the billing date. The CMN initial date, the verbal order date, and the date of delivery should be the same date. It is acceptable to have a cover letter containing the same information as the CMN, stating the qualified medical practitioner's orders. The CMN signed by the qualified medical practitioner must be attached to the PAR.

(3) ~~Prescription for oxygen services must be updated at least annually and at any time a change in prescription occurs during the year. All DMEPOS suppliers are responsible for maintaining the prescription(s) for oxygen services and CMN in each member's file. If any change in prescription occurs, the physician must complete a new CMN that must be maintained in the member's file by the DME supplier. The OHCA or its designated agent will conduct ongoing monitoring of prescriptions for oxygen services to ensure guidelines are followed. Payment adjustments will be made on claims not meeting these requirements.~~ The medical and prescription information on the CMN may be completed by a non-physician clinician, or an employee, for the qualified medical practitioner's review and signature.

(4) When a Certificate of Medical Necessity for oxygen is recertified, a prior authorization request will be required.

(5) Re-certification and related retesting will be required every 12 months.

(6) CMN for oxygen services must be updated at least annually and at any time a change in prescription occurs during the year. All DMEPOS suppliers are responsible for maintaining the prescription(s) for oxygen services and CMN in each member's file.

(7) The OHCA or its designated agent will conduct ongoing monitoring of prescriptions for oxygen services to ensure guidelines are followed. Payment adjustments will be made on claims not meeting these requirements.

317:30-5-211.12. Oxygen rental

A monthly rental payment is made for rental of liquid oxygen systems, gaseous oxygen systems and oxygen concentrators. The rental payment for a stationary system includes all contents and supplies, such as, regulators, tubing, masks, ~~etc~~etc., that are medically necessary. An additional monthly payment may be made for a portable liquid or gaseous oxygen system based on medical necessity.

(1) ~~Oxygen concentrators~~Stationary oxygen systems and portable oxygen systems are covered items for members residing in their home or in a nursing facility.

(2) For members who meet medical necessity criteria, SoonerCare covers portable liquid or gaseous oxygen systems. Portable oxygen contents are not covered for adults. The need for a portable oxygen system must be stated on the CMN. A portable system that is used as a backup system only is not a covered item.

(3) When ~~six~~four or more liters of oxygen are medically necessary, an additional payment will be paid up to 150% of the allowable for a stationary system when billed with the appropriate modifier.

[OAR Docket #15-503; filed 6-12-15]

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

[OAR Docket #15-498]

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INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Rules regarding SoonerCare member's freedom of choice to select their provider of durable medical equipment, prostethics, orthotics, and supplies (DMEPOS) are amended to state that providers must inform members of this right when filling or ordering DMEPOS.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 17. MEDICAL SUPPLIERS

317:30-5-211.7. Free choice

A member has the choice of which provider will fill the prescription or order for a DMEPOS. ~~The prescribing physician should give the written prescription or order to the member in order to allow the member freedom of choice~~. All providers must inform the member they have a choice of provider when filling or ordering DMEPOS.

[OAR Docket #15-498; filed 6-12-15]

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

[OAR Docket #15-536]

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RULES:
Subchapter 5. Individual Providers and Specialties
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317:30-5-22.1 [AMENDED]
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ANALYSIS:
Rules are revised to allow general OB/GYN providers the ability to evaluate pregnant women for a defined list of high risk obstetrical services without a referral from a Maternal Fetal Medicine doctor.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 1. PHYSICIANS

317:30-5-22. Obstetrical care

(a) Obstetrical (OB) care is billed using the appropriate CPT codes for Maternity Care and Delivery. The date of delivery is used as the date of service for charges for total obstetrical care. Inclusive dates of care should be indicated on the claim form as part of the description. Payment for total obstetrical care includes all routine care, and any ultrasounds performed by the attending physician provided during the maternity cycle unless otherwise specified in this Section. For payment of total OB care, a physician must have provided care for more than one trimester. To bill for prenatal care only, the claim is filed after the member leaves the provider's care. Payment for routine or minor medical problems will not be made separately to the OB physician outside of the ante partum visits. The ante partum care during the prenatal care period includes all care by the OB attending physician except major illness distinctly unrelated to the pregnancy.

(b) Procedures paid separately from total obstetrical care are listed in (1) - (8) of this subsection.

(1) The completion of an American College of Obstetricians and Gynecologist (ACOG) assessment form or form covering same elements as ACOG and the most recent version of the Oklahoma Health Care Authority's Prenatal Psychosocial Assessment are reimbursable when both documents are included in the prenatal record. SoonerCare allows one assessment per provider and no more than two per pregnancy.

(2) Medically necessary real time ante partum diagnostic ultrasounds will be paid for in addition to ante partum care, delivery and post partum obstetrical care under defined circumstances. To be eligible for payment, ultrasound reports must meet the guideline standards published by the American Institute of Ultrasound Medicine (AIUM).

(A) One abdominal or vaginal ultrasound will be covered in the first trimester of pregnancy. The ultrasound must be performed by a board certified Obstetrician-Gynecologist (OB-GYN), Radiologist, or a Maternal-Fetal Medicine specialist. In addition, this ultrasound may be performed by a Nurse Midwife, Family Practice Physician or Advance Practice Nurse Practitioner in Obstetrics with a certification in obstetrical ultrasonography.

(B) One ultrasound after the first trimester will be covered. This ultrasound must be performed by a board certified Obstetrician-Gynecologist (OB-GYN), Radiologist, or a Maternal-Fetal Medicine specialist. In addition, this ultrasound may be performed by a Nurse Midwife, Family Practice Physician or Advance Practice Nurse Practitioner in Obstetrics with certification in obstetrical ultrasonography.

(C) Additional ultrasounds, including detailed ultrasounds and re-evaluations of previously identified or suspected fetal or maternal anomalies must be performed by an active candidate or Board Certified

diplomat in Maternal-Fetal Medicine, or Board Certified Obstetrician-Gynecologist (OB-GYN). Up to six repeat ultrasounds are allowed after which, prior authorization is required.

(3) Standby attendance at Cesarean Section (C-Section), for the purpose of attending the baby, is compensable when billed by a physician not participating in the delivery.

(4) Spinal anesthesia administered by the attending physician is a compensable service and is billed separately from the delivery.

(5) Amniocentesis is not included in routine obstetrical care and is billed separately. Payment may be made for an evaluation and management service and amniocentesis on the same date of service. This is an exception to general information regarding surgery found at OAC 317:30-5-8.

(6) Additional payment is not made for the delivery of twins. If one twin is delivered vaginally and one is delivered by C-section by the same physician, the higher level procedure is paid. If one twin is delivered vaginally and one twin is delivered by C-Section, by different physicians, each should bill the appropriate procedure codes without a modifier. Payment is not made to the same physician for both standby and assistant at C-Section.

(7) One non stress test and/or biophysical profile to confirm a suspected high risk pregnancy diagnosis. The non stress test and/or biophysical profile must be performed by an active candidate or Board Certified diplomate in Maternal Fetal Medicine, or Board Certified Obstetrician-Gynecologist (OB-GYN).

(8) Nutritional counseling in a group setting for members with gestational diabetes. Refer to OAC 317:30-5-1076(5).

(c) Assistant surgeons are paid for C-Sections which include only in-hospital post-operative care. Family practitioners who provide prenatal care and assist at C-Section bill separately for the prenatal and the six weeks postpartum office visit.

(d) Procedures listed in (1) - (5) of this subsection are not paid or not covered separately from total obstetrical care.

(1) Additional non stress tests, unless the pregnancy is determined medically high risk. See OAC 317:30-5-22.1.

(2) Standby at C-Section is not compensable when billed by a physician participating in delivery.

(3) Payment is not made for an assistant surgeon for obstetrical procedures that include prenatal or post partum care.

(4) An additional allowance is not made for induction of labor, double set-up examinations, fetal stress tests, or pudendal anesthetic. Providers must not bill separately for these procedures.

(5) Fetal scalp blood sampling is considered part of the total OB care.

(e) Obstetrical coverage for children is the same as for adults with additional procedures being covered due to EPSDT provisions if determined to be medically necessary.

(1) Services deemed medically necessary and allowable under federal Medicaid regulations are covered by the EPSDT/OHCA Child Health Program even though those services may not be part of the Oklahoma Health Care Authority SoonerCare program. Such services must be prior authorized.

(2) Federal Medicaid regulations also require the State to make the determination as to whether the service is medically necessary and do not require the provision of any items or services that the State determines are not safe and effective or which are considered experimental.

317:30-5-22.1. Enhanced services for medically high risk pregnancies

(a) **Enhanced services.** Enhanced services are available for pregnant women eligible for SoonerCare and are in addition to services for uncomplicated maternity cases. Women deemed high risk based on criteria established by the OHCA may receive prior authorization for medically necessary enhanced benefits which include:

(1) prenatal at risk ante partum management;

(2) a combined maximum of 12 fetal non stress test(s) and biophysical profiles (additional units can be prior authorized for multiple fetuses); and

(3) a maximum of 6 repeat ultrasounds not covered under OAC 317:30-5-22(b)(2).

(b) **Prior authorization.** To receive enhanced services, the following documentation must be received by the OHCA Medical Authorizations Unit for review and approval:

(1) ACOG or other comparable comprehensive prenatal assessment;

(2) chart note identifying and detailing the qualifying high risk condition; and

(3) an OHCA High Risk OB Treatment Plan/Prior Authorization Request (CH-17) signed by a Maternal Fetal Medicine (MFM) specialist, or Board Certified Obstetrician-Gynecologist (OB-GYN).

(c) **Reimbursement.** When prior authorized, enhanced benefits will be reimbursed as follows:

(1) Ante partum management for high risk is reimbursed to the primary obstetrical provider. If the primary provider of obstetrical care is not the MFM and wishes to request authorization of the ante partum management fee, the OHCA CH-17 must be signed by the primary provider of OB care. Additionally, reimbursement for enhanced at risk ante partum management is not made during an in-patient hospital stay.

(2) Non stress tests, biophysical profiles and ultrasounds (in addition to those covered under OAC 317:30-5-22(a)(2) subparagraphs (A) through (C) are reimbursed when prior authorized.

(3) Reimbursement for enhanced at risk ante partum management is not available to physicians who already qualify for enhanced reimbursement as state employed physicians.

[OAR Docket #15-536; filed 6-12-15]

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

[OAR Docket #15-507]

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RULES:
Subchapter 5. Individual Providers and Specialties
Part 21. Outpatient Behavioral Health Agency Services
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Part 25. Psychologists
317:30-5-276. [AMENDED]
Part 26. Licensed Behavioral Health Providers
317:30-5-281. [AMENDED]
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Part 25. Psychologists
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Part 26. Licensed Behavioral Health Providers
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32 Ok Reg 225
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n/a
ANALYSIS:
Rules are revised to limit the number of hours that outpatient behavioral health rendering providers can be reimbursed to 35 hours per week. Additionally, rules are revised to correct scrivener's errors made during the 2014 permanent rulemaking session.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 21. OUTPATIENT BEHAVIORAL HEALTH AGENCY SERVICES

317:30-5-241. Covered Services

(a) Outpatient behavioral health services are covered for adults and children as set forth in this Section when provided in accordance with a documented individualized service plan, developed to treat the identified behavioral health and/or substance use disorder(s), unless specified otherwise.

(b) All services are to be for the goal of improvement of functioning, independence, or well-being of the member. The services and service plans are to be recovery focused, trauma and co-occurring specific. The member must be able to actively participate in the treatment. Active participation means that the member must have sufficient cognitive abilities, communication skills, and short-term memory to derive a reasonable benefit from the treatment.

(c) In order to be reimbursed for services, providers must submit a completed Customer Data Core (CDC) to OHCA or its designated agent. The CDC must be reviewed, updated and resubmitted by the provider every six months. Reimbursement is made only for services provided while a current CDC is on file with OHCA or its designated agent. For further information and instructions regarding the CDC, refer to the Behavioral Health Provider Manual.

(d) All outpatient BH services must be provided following established medical necessity criteria. Some outpatient behavioral health services may require authorization. For information regarding services requiring authorization and the process for obtaining them, refer to the Behavioral Health Provider Manual. Authorization of services is not a guarantee of payment. The provider is responsible for ensuring that the eligibility, medical necessity, procedural, coding, claims submission, and all other state and federal requirements are met. OHCA does retain the final administrative review over both authorization and review of services as required by 42 CFR 431.10.

(e) Services to nursing facility residents. Reimbursement is not allowed for outpatient behavioral health services provided to members residing in a nursing facility. Provision of these services is the responsibility of the nursing facility and reimbursement is included within the rate paid to the nursing facility for the member's care.

(f) In addition to individual service limitations, reimbursement for outpatient behavioral health services is limited to 35 hours per rendering provider per week. Service hours will be calculated using a rolling four week average. Services not included in this limitation are:

(1) Assessments;
(2) Testing;
(3) Service plan development; and
(4) Crisis intervention services.

PART 25. PSYCHOLOGISTS

317:30-5-276. Coverage by category

(a) **Outpatient Behavioral Health Services.** Outpatient behavioral health services are covered as set forth in this Section, when provided in accordance with a documented individualized service plan medical record, developed to treat the identified behavioral health and/or substance use disorder(s), unless specified otherwise.

(1) All services are to be for the goal of improvement of functioning, independence, or wellbeing of the member. The services and treatment plans are to be recovery focused, trauma and co-occurring specific. The member must be able to actively participate in the treatment. Active participation means that the member must have sufficient cognitive abilities, communication skills, and short-term memory to derive a reasonable benefit from the treatment.

(2) In order to be reimbursed for services, providers must submit a completed Customer Data Core (CDC) to OHCA or its designated agent. The CDC must be reviewed, updated and resubmitted by the provider every six months. Reimbursement is made only for services provided while a current CDC is on file with OHCA or its designated agent. For further information and instructions regarding the CDC, refer to the Prior Authorization Manual.

(3) Some outpatient behavioral health services may require authorization. For information regarding services requiring authorization and the process for obtaining them, refer to the Prior Authorization Manual. Authorization of services is not a guarantee of payment. The provider is responsible for ensuring that the eligibility, medical necessity, procedural, coding, claims submission, and all other state and federal requirements are met. OHCA does retain the final administrative review over both authorization and review of services as required by 42 CFR 431.10.

(b) **Adults.** Coverage for adults by a psychologist is limited to Bio-Psycho-Social Assessments when required by OHCA as part of a preoperative prior authorization protocol for organ transplant or bariatric surgical procedures.

(1) The interview and assessment is defined as a face-to-face interaction with the member. Assessment includes a history, mental status, full bio-psycho-social evaluation, a disposition, communications with family or other sources, review of laboratory or other pertinent medical information, and medical/clinical consultations as necessary. The pre-op evaluation should aim to assess the member's psychological well-being, ability to make informed decisions, and willingness to participate actively in postoperative treatment.

(2) For bariatric preoperative assessments, issues to address include, but are not limited to: Depression, self-esteem, stress management, coping skills, binge eating, change in eating habits, other eating disorders, change in social roles, changes associated with return to work/school, body image, sexual function, lifestyle issues, personality factors that may affect treatment and recovery, alcohol or substance use disorders, ability to make lasting behavior changes, and need for further support and counseling.

(c) **Children.** Coverage for children includes the following services:

(1) Bio-Psycho-Social Assessments. Psychiatric Diagnostic Interview Examination (PDIE) initial assessment or Level of Care Assessment. The interview and assessment is defined as a face-to-face interaction with the member. Psychiatric diagnostic interview examination includes a history, mental status, and a disposition, and may include communication with family or other sources, ordering and medical interpretation of laboratory or other medical diagnostic studies. Only one PDIE is allowable per provider per member. If there has been a break in service over a six month period, then an additional unit of PDIE can be prior authorized by OHCA, or their designated agent.

(2) Psychotherapy in an outpatient setting including an office, clinic, or other confidential setting. The services may be performed at the residence of the member if it is demonstrated that it is clinically beneficial, or if the member is unable to go to a clinic or office. Psychotherapy is defined as a one to one treatment using a widely accepted modality or treatment framework suited to the individual's age, developmental abilities and diagnosis. It may include specialized techniques such as biofeedback or hypnosis. Psychotherapy is considered to involve "interactive complexity" when there are communication factors during a visit that complicate delivery of the psychotherapy by the psychologist. Sessions typically involve members who have other individuals legally responsible for their care (i.e. minors or adults with guardians); members who request others to be involved in their care during the session (i.e. adults accompanied by one or more participating family members or interpreter or language translator); or members that require involvement of other third parties (i.e. child welfare, juvenile justice, parole/probation officers, schools, etc.). Psychotherapy should only be reported as involving interactive complexity when at least one of the following communication factors is present:

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

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

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

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

(3) Family Psychotherapy is performed in an outpatient setting limited to an office, clinic, or other confidential setting. Family therapy is a face-to-face interaction between a therapist and the patient/family to facilitate emotional, psychological or behavioral changes and promote communication and understanding. Family therapy must be provided for the benefit of a SoonerCare eligible child as a specifically identified component of an individual treatment plan.

(4) Group and/or Interactive Group psychotherapy in an outpatient setting must be performed in the psychologist's office, clinic, or other confidential setting. Group therapy is a face to face interaction between a therapist and two or more unrelated patients (though there may be siblings in the same group, just not siblings only) to facilitate emotional, psychological, or behavioral changes. All group therapy records must indicate group size. Maximum total group size is six patients for children four years of age up to the age of 18. Groups 18-20 year olds can include eight individuals. Group therapy must be provided for the benefit of a SoonerCare eligible child four years of age or older as a specifically identified component of an individual treatment plan. Multi-family group therapy size is limited to eight family units.

(5) Assessment/Evaluation and testing is provided by a psychological technician of a psychologist or a LBHP utilizing tests selected from currently accepted assessment test batteries. For assessments conducted in a school setting, the Oklahoma State Department of Education requires that a licensed supervisor sign the assessment. Eight hours/units of testing per patient (over the age of ~~two~~three), per provider is allowed every 12 months. There may be instances when further testing is appropriate based on established medical necessity criteria found in the Prior Authorization Manual. Test results must be reflected in the service plan or medical record. The service must clearly document the need for the testing and what the testing is expected to achieve. Testing for a child younger than three must be medically necessary and meet established criteria as set forth in the Prior Authorization Manual. Justification for additional testing beyond allowed amount as specified in this section must be clearly explained and documented in the medical record. Testing units must be billed on the date the testing, interpretation, scoring, and/or reporting was performed and supported by documentation.

(6) Health and Behavior codes - behavioral health services are available only to chronically and severely medically ill children.

(7) Crisis intervention services for the purpose of stabilization and hospital diversion as clinically appropriate.

(8) Payment for therapy services provided by a psychologist to any one member is limited to eight sessions/units per month. A maximum of 12 sessions/units of therapy and testing services per day per provider are allowed. A maximum of 35 hours of therapy per week per provider are allowed. The weekly service hour limitation will be calculated using a rolling four week average. Case Management services are considered an integral component of the behavioral health services listed above.

(9) A child who is being treated in an acute psychiatric inpatient setting can receive separate Psychological services as the inpatient per diem is for "non-physician" services only.

(10) A child receiving Residential Behavioral Management in a foster home, also known as therapeutic foster care, or a child receiving Residential Behavioral Management in a group home, also known as therapeutic group home, may not receive individual, group or family counseling or psychological testing unless allowed by the OHCA or its designated agent.

(d) **Home and Community Based Waiver Services for the Intellectually Disabled.** All providers participating in the Home and Community Based Waiver Services for the intellectually disabled program must have a separate contract with this Authority to provide services under this program. All services are specified in the individual's plan of care.

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

(f) **Nursing Facilities.** Services provided to members residing in nursing facilities may not be billed to SoonerCare.

PART 26. LICENSED BEHAVIORAL HEALTH PROVIDERS

317:30-5-281. Coverage by Category

(a) **Outpatient Behavioral Health Services.** Outpatient behavioral health services are covered as set forth in this Section, and when provided in accordance with a documented individualized service plan and/or medical record, developed to treat the identified behavioral health and/or substance use disorder(s), unless specified otherwise.

(1) All services are to be for the goal of improvement of functioning, independence, or wellbeing of the member. The services and treatment plans are to be recovery focused, trauma and co-occurring specific. The member must be able to actively participate in the treatment. Active participation means that the member must have sufficient cognitive abilities, communication skills, and short-term memory to derive a reasonable benefit from the treatment.

(2) In order to be reimbursed for services, providers must submit a completed Customer Data Core (CDC) to OHCA or its designated agent. The CDC must be reviewed, updated and resubmitted by the provider every six months. Reimbursement is made only for services provided while a current CDC is on file with OHCA or its designated agent. For further information and instructions regarding the CDC, refer to the Prior Authorization Manual.

(3) Some outpatient behavioral health services may require authorization. For information regarding services requiring authorization and the process for obtaining them, refer to the Prior Authorization Manual. Authorization

of services is not a guarantee of payment. The provider is responsible for ensuring that the eligibility, medical necessity, procedural, coding, claims submission, and all other state and federal requirements are met. OHCA does retain the final administrative review over both authorization and review of services as required by 42 CFR 431.10.

(b) **Adults.** Coverage for adults by a LBHP is limited to Bio-Psycho-Social Assessments when required by OHCA as part of a preoperative prior authorization protocol for organ transplant or bariatric surgical procedures.

(1) The interview and assessment is defined as a face-to-face interaction with the member. Assessment includes a history, mental status, full bio-psycho-social evaluation, a disposition, communications with family or other sources, review of laboratory or other pertinent medical information, and medical/clinical consultations as necessary. The pre-op evaluation should aim to assess the member's psychological well-being, ability to make informed decisions, and willingness to participate actively in postoperative treatment.

(2) For bariatric preoperative assessments, issues to address include, but are not limited to: depression, self-esteem, stress management, coping skills, binge eating, change in eating habits, other eating disorders, change in social roles, changes associated with return to work/school, body image, sexual function, lifestyle issues, personality factors that may affect treatment and recovery, alcohol or substance use disorders, ability to make lasting behavior changes, and need for further support and counseling.

(c) **Children.** Coverage for children includes the following services:

(1) Bio-Psycho-Social and Level of Care Assessments.

(A) The interview and assessment is defined as a face-to-face interaction with the member. Assessment includes a history, mental status, full bio-psycho-social evaluation, a disposition, communications with family or other sources, review of laboratory or other pertinent medical information, and medical/clinical consultations as necessary.

(B) Assessments for Children's Level of Care determination of medical necessity must follow a specified assessment process through OHCA or their designated agent. Only one assessment is allowable per provider per member. If there has been a break in service over a six month period, or the assessment is conducted for the purpose of determining a child's need for inpatient psychiatric admission, then an additional unit can be authorized by OHCA, or their designated agent.

(2) Psychotherapy in an outpatient setting including an office, clinic, or other confidential setting. The services may be performed at the residence of the member if it is demonstrated that it is clinically beneficial, or if the member is unable to go to a clinic or office. Individual psychotherapy is defined as a one to one treatment using a widely accepted modality or treatment framework suited to the individual's age, developmental abilities and diagnosis. It may include specialized techniques such as biofeedback or hypnosis. Psychotherapy is considered to involve "interactive complexity" when there are communication factors during a visit that complicate delivery of the psychotherapy by the LBHP. Sessions typically involve members who have other individuals legally responsible for their care (i.e. minors or adults with guardians); members who request others to be involved in their care during the session (i.e. adults accompanied by one or more participating family members or interpreter or language translator); or members that require involvement of other third parties (i.e. child welfare, juvenile justice, parole/probation officers, schools, etc.). Psychotherapy should only be reported as involving interactive complexity when at least one of the following communication factors is present:

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

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

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

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

(3) Family Psychotherapy is performed in an outpatient setting limited to an office, clinic, or other confidential setting. Family therapy is a face-to-face interaction between a therapist and the patient/family to facilitate emotional, psychological or behavioral changes and promote communication and understanding. Family therapy must be provided for the benefit of the member as a specifically identified component of an individual treatment plan.

(4) Group and/or Interactive Group psychotherapy in an outpatient setting must be performed in an office, clinic, or other confidential setting. Group therapy is a face-to-face interaction between a therapist and two or more unrelated patients (though there may be siblings in the same group, just not siblings only) to facilitate emotional, psychological, or behavioral changes. All group therapy records must indicate group size. Maximum total group size is six for ages four up to 18. Groups 18-20 year olds can include eight individuals. Group therapy must be provided for the benefit of the member as a specifically identified component of an individual treatment plan. Multi-family group therapy size is limited to eight family units.

(5) Assessment/Evaluation and testing is provided by a psychologist, certified psychometrist, psychological technician of a psychologist or a LBHP utilizing tests selected

from currently accepted assessment test batteries. For assessments conducted in a school setting, the Oklahoma State Department of Education requires that a licensed supervisor sign the assessment. Eight hours/units of testing per patient (over the age of ~~two~~three), per provider is allowed every 12 months. There may be instances when further testing is appropriate based on established medical necessity criteria found in the Prior Authorization Manual. Justification for additional testing beyond allowed amount as specified in this section must be clearly explained and documented in the medical record. Test results must be reflected in the service plan or medical record. The service plan must clearly document the need for the testing and what the testing is expected to achieve. ~~Testing for a child younger than three must be medically necessary and meet established Child (0-36 months of Age) criteria as set forth in the Prior Authorization Manual.~~ Testing units must be billed on the date the testing, interpretation, scoring, and/or reporting was performed and supported by documentation.

(6) Crisis intervention services for the purpose of stabilization and hospitalization diversion as clinically appropriate.

(7) Payment for therapy services provided by a LBHP to any one member is limited to eight sessions/units per month. A maximum of 12 sessions/units of therapy and testing services per day per provider are allowed. A maximum of 35 hours of therapy per week per provider are allowed. The weekly service hour limitation will be calculated using a rolling four week average. Case Management services are considered an integral component of the behavioral health services listed above.

(8) A child receiving Residential Behavioral Management in a foster home, also known as therapeutic foster care, or a child receiving Residential Behavioral Management in a group home, also known as therapeutic group home, may not receive individual, group or family counseling or testing unless allowed by the OHCA or their designated agent.

(d) **Home and Community Based Waiver Services for the Intellectually Disabled.** All providers participating in the Home and Community Based Waiver Services for the intellectually disabled program must have a separate contract with this Authority to provide services under this program. All services are specified in the individual's plan of care.

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

(f) **Nursing Facilities.** Services provided to members residing in nursing facilities may not be billed to SoonerCare.

[OAR Docket #15-507; filed 6-12-15]

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

[OAR Docket #15-534]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 21. Outpatient Behavioral Health Agency Services
317:30-5-241.1. [AMENDED]
(Reference APA WF # 14-53)
AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes
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INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Policy is revised to add service coverage for mental health/substance use disorder screening for SoonerCare adult and child members within an outpatient behavioral health agency setting. Additionally, rules are revised to create a distinction between LBHPs and Licensure Candidates.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 21. OUTPATIENT BEHAVIORAL HEALTH AGENCY SERVICES

317:30-5-241.1. Screening, assessment and service plan

All providers must comply with the requirements as set forth in this Section.

(1) **Screening.**

(A) **Definition.** Screening is for the purpose of determining whether the member meets basic medical necessity and need for further BH assessment and possible treatment services.

(B) **Qualified professional.** Screenings can be performed by any credentialed staff members as listed under OAC 317:30-5-240.3.

(C) **Target population and limitations.** ~~This service is compensable only on behalf of a member who is under a PACT program.~~Screening is compensable on behalf of a member who is seeking services for the first time from the contracted agency. This service is not compensable if the member has previously received or is currently receiving services from the agency, unless there has been a gap in service of more than six months. To qualify for reimbursement, the screening tools used must be evidence based or otherwise approved by OHCA and ODMHSAS and appropriate for the age and/or developmental stage of the member.

(2) **Assessment.**

(A) **Definition.** Gathering and assessment of historical and current bio-psycho-social information which includes face-to-face contact with the person and/or the person's family or other informants, or group of persons resulting in a written summary report, diagnosis and recommendations. All agencies must assess the medical necessity of each individual to determine the appropriate level of care.

(B) **Qualified ~~professional~~practitioners.** This service is performed by an LBHP or Licensure Candidate.

(C) **Time requirements.** The minimum face-to-face time spent in assessment session(s) with the member and others as identified previously in paragraph (1) of this subsection for a low complexity Behavioral Health Assessment by a Non-Physician is one and one half hours. For a moderate complexity, it is two hours or more.

(D) **Target population and limitations.** The Behavioral Health Assessment by a Non-Physician, moderate complexity, is compensable on behalf of a member who is seeking services for the first time from the contracted agency. This service is not compensable if the member has previously received or is currently receiving services from the agency, unless there has been a gap in service of more than six months and it has been more than one year since the previous assessment.

(E) **Documentation requirements.** The assessment must include all elements and tools required by the OHCA. In the case of children under the age of 18, it is performed with the direct, active face-to-face participation of the parent or guardian. The child's level of participation is based on age, developmental and clinical appropriateness. The assessment must include at least one DSM diagnosis from the most recent DSM edition. The assessment must contain but is not limited to the following:

(i) Date, to include month, day and year of the assessment session(s);

(ii) Source of information;

(iii) Member's first name, middle initial and last name;

(iv) Gender;

(v) Birth Date;

(vi) Home address;

(vii) Telephone number;

(viii) Referral source;

(ix) Reason for referral;

(x) Person to be notified in case of emergency;

(xi) Presenting reason for seeking services;

(xii) Start and stop time for each unit billed;

(xiii) Signature of parent ~~of~~or guardian participating in face-to-face assessment. Signature required for members over the age of 14;

(xiv) Bio-Psychosocial information which must include:

(I) Identification of the member's strengths, needs, abilities and preferences;

(II) History of the presenting problem;

(III) Previous psychiatric treatment history, include treatment for psychiatric; substance abuse; drug and alcohol addiction; and other addictions;

(IV) Health history and current biomedical conditions and complications;

(V) Alcohol, Drug, and/or other addictions history;

(VI) Trauma, abuse, neglect, violence, and/or sexual assault history of self and/or others, include Department of Human Services involvement;

(VII) Family and social history, include MH, SA, Addictions, Trauma/Abuse/Neglect;

(VIII) Educational attainment, difficulties and history;

(IX) Cultural and religious orientation;

(X) Vocational, occupational and military history;

(XI) Sexual history, including HIV, AIDS, and STD at-risk behaviors;

(XII) Marital or significant other relationship history;

(XIII) Recreation and leisure history;

(XIV) Legal or criminal record, including the identification of key contacts, (e.g., attorneys, probation officers, etc.);

(XV) Present living arrangements;

(XVI) Economic resources;

(XVII) Current support system including peer and other recovery supports.

(xv) Mental status and Level of Functioning information, including questions regarding:

(I) Physical presentation, such as general appearance, motor activity, attention and alertness, etc.;

(II) Affective process, such as mood, affect, manner and attitude, etc.;

(III) Cognitive process, such as intellectual ability, social-adaptive behavior, thought processes, thought content, and memory, etc.; and

(IV) Full DSM diagnosis.

(xvi) Pharmaceutical information to include the following for both current and past medications;

(I) Name of medication;

(II) Strength and dosage of medication;

(III) Length of time on the medication; and

(IV) Benefit(s) and side effects of medication.

(xvii) ~~LBHP's~~Practitioner's interpretation of findings and diagnosis;

(xviii) Signature and credentials of ~~LBHP~~the practitioner who performed the face-to-face behavioral assessment;

(xix) Client Data Core Elements reported into designated OHCA representative.

(3) **Behavioral Health Services Plan Development.**

(A) **Definition.** The Behavioral Health Service Plan is developed based on information obtained in the assessment and includes the evaluation of all pertinent information by the practitioners and the member. It includes a discharge plan. It is a process whereby an individualized plan is developed that addresses the member's strengths, functional assets, weaknesses or liabilities, treatment goals, objectives and methodologies that are specific and time limited, and defines the services to be performed by the practitioners and others who comprise the treatment team. Behavioral Health Service Plan Development is performed with the direct active participation of the member and a member support person or advocate if requested by the member. In the case of children under the age of 18, it is performed with the participation of the parent or guardian and the child as age and developmentally appropriate, and must address school and educational concerns and assisting the family in caring for the child in the least restrictive level of care. For adults, it is focused on recovery and achieving maximum community interaction and involvement including goals for employment, independent living, volunteer work, or training. A Service Plan Development, Low Complexity is required every 6 months and must include an update to the bio-psychosocial assessment and re-evaluation of diagnosis.

(B) **Qualified ~~professional~~practitioners.** This service is performed by an LBHP or Licensure Candidate.

(C) **Time requirements.** Service Plan updates must be conducted face-to-face and are required every six months during active treatment. Updates can be conducted whenever it is clinically needed as determined by the ~~LBHP~~qualified practitioner and member.

(D) **Documentation requirements.** Comprehensive and integrated service plan content must address the following:

(i) member strengths, needs, abilities, and preferences(SNAP);

(ii) identified presenting challenges, problems, needs and diagnosis;

(iii) specific goals for the member;

(iv) objectives that are specific, attainable, realistic, and time-limited;

(v) each type of service and estimated frequency to be received;

(vi) the practitioner(s) name and credentials that will be providing and responsible for each service;

(vii) any needed referrals for service;

(viii) specific discharge criteria;

(ix) description of the member's involvement in, and responses to, the service plan, and his/her signature and date;

(x) service plans are not valid until all signatures are present (signatures are required from the member, (if 14 or over), the parent/guardian (if younger than 18 or otherwise applicable), and the primary LBHP or Licensure Candidate; and

(xi) all changes in service plan must be documented in a service plan update (low complexity) or within the service plan until time for the update (low complexity). Any changes to the existing service plan must be signed and dated by the member (if 14 or over), the parent/guardian (if younger than 18 or otherwise applicable), and the lead LBHP or Licensure Candidate.

(xii) Updates to goals, objectives, service provider, services, and service frequency, must be documented within the service plan until the six month review/update is due.

(xiii) Service plan updates must address the following:

(I) update to the bio-psychosocial assessment, re-evaluation of diagnosis service plan goals and/ or objectives;

(II) progress, or lack of, on previous service plan goals and/or objectives;

(III) a statement documenting a review of the current service plan and an explanation if no changes are to be made to the service plan;

(IV) change in goals and/or objectives (including target dates) based upon member's progress or identification of new need, challenges and problems;

(V) change in frequency and/or type of services provided;

(VI) change in practitioner(s) who will be responsible for providing services on the plan;

(VII) change in discharge criteria;

(VIII) description of the member's involvement in, and responses to, the service plan, and his/her signature and date; and

(IX) service plans are not valid until all signatures are present. The required signatures are: from the member (if 14 or over), the parent/guardian (if younger than 18 or otherwise applicable), and the primary LBHP or Licensure Candidate.

(E) **Service limitations:**

(i) Behavioral Health Service Plan Development, Moderate complexity (i.e., pre-admission procedure code group) are limited to 1 per member, per provider, unless more than a year has passed between services, then another one can be requested and may be authorized by OHCA or its designated agent.

(ii) Behavioral Health Service Plan Development, Low Complexity: Service Plan updates are required every six months during active treatment. Updates can be conducted whenever needed as determined by the provider and member. The date of service is when the service plan is complete and the date the last required signature is obtained. Services should always be age, developmentally, and clinically appropriate.

(4) **Assessment/Evaluation testing.**

(A) **Definition.** Assessment/Evaluation testing is provided by a clinician utilizing tests selected from currently accepted assessment test batteries. Test results must be reflected in the Service Plan. The medical record must clearly document the need for the testing and what the testing is expected to achieve.

(B) **Qualified ~~professionals~~practitioners.** Assessment/Evaluation testing will be provided by a psychologist, certified psychometrist, psychological technician of a psychologist ~~or a LBHP~~., an LBHP or Licensure Candidate. For assessments conducted in a school setting, the Oklahoma State Department of Education requires that a licensed supervisor sign the assessment. Each qualified professional must have a current contract with the Oklahoma Health Care Authority.

(C) **Documentation requirements.** All psychological services must be reflected by documentation in the member's record. All assessment, testing, and treatment services/units billed must include the following:

(i) date;

(ii) start and stop time for each session/unit billed and physical location where service was provided;

(iii) signature of the provider;

(iv) credentials of provider;

(v) specific problem(s), goals and/or objectives addressed;

(vi) methods used to address problem(s), goals and objectives;

(vii) progress made toward goals and objectives;

(viii) patient response to the session or intervention; and

(ix) any new problem(s), goals and/or objectives identified during the session.

(D) **Service Limitations.** Testing for a child younger than three must be medically necessary and meet established Child (0-36 months of Age) criteria as set forth in the Behavioral Health Provider Manual. Evaluation and testing is clinically appropriate and allowable when an accurate diagnosis and determination of treatment needs is needed. Eight hours/units of testing per patient over the age of ~~two~~three, per provider is allowed every 12 months. There may be instances when further testing is appropriate based on established medical necessity criteria found in the Behavioral Health Provider Manual. Justification for additional testing beyond allowed amount as specified in this section must be clearly explained and documented in the medical record. Testing units must be billed on the date the actual testing, interpretation, scoring, and reporting are performed. A maximum of 12 hours of therapy and testing, per day per rendering provider are allowed. A child who is being treated in an acute inpatient setting can receive separate psychological services by a physician or psychologist as the inpatient per diem is for "non-physician" services only. A child receiving Residential level treatment in either a therapeutic foster care home, or group home may not receive additional individual, group or family counseling or psychological testing unless allowed by the OHCA or its designated agent. Psychologists employed in State and Federal Agencies, who are not permitted to engage in private practice, cannot be reimbursed for services as an individually contracted provider. For assessment conducted in a school setting the Oklahoma State Department of Education requires that a licensed supervisor sign the assessment. Individuals who qualify for Part B of Medicare: Payment is made utilizing the SoonerCare allowable for comparable services. Payment is made to physicians, LBHPs or psychologists with a license to practice in the state where the services is performed or to practitioners who have completed education requirements and are under current board approved supervision to become licensed.

[OAR Docket #15-534; filed 6-12-15]

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

[OAR Docket #15-504]

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(Reference APA WF # 14-13)
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Rules are amended to add eligibility criteria in order to receive psychosocial rehabilitation (PSR) services. Additionally, revisions to outpatient behavioral health rules are made to clarify rehab day program progress note requirements, to create distinction between licensed behavioral health professionals and licensure candidates, to clarify that group psychotherapy is not reimbursable for children younger than 3, and other grammatical changes.
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 21. OUTPATIENT BEHAVIORAL HEALTH AGENCY SERVICES

317:30-5-241.2. Psychotherapy

(a) **Psychotherapy.**

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

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

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

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

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

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

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

(4) **Limitations.** A maximum of 6 units per day per member is compensable. Except for psychotherapy involving interactive complexity as described in this

Section, only the member and the ~~Licensed Behavioral Health Professional (LBHP)~~qualified practitioner should be present during the session. Psychotherapy for a child younger than three must be medically necessary and meet established Child (0-36 months of Age) criteria as set forth in the Prior Authorization Manual.

(b) **Group Psychotherapy.**

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

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

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

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

(5) **Limitations.** A maximum of 12 units per day per member is compensable. Group Psychotherapy is not reimbursable for a child younger than three~~. must be medically necessary and meet established Child (0-36 months of Age) criteria as set forth in the Prior Authorization Manual.~~

(c) **Family Psychotherapy.**

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

(2) **Qualified ~~professionals~~practitioners.** Family Psychotherapy must be provided by ~~a~~an LBHP or Licensure Candidate.

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

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

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

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

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

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

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

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

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

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

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

(D) Drugs and biologicals furnished for therapeutic purposes.

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

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

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

(2) **Qualified ~~professionals~~practitioners.**

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

(i) A licensed physician;

(ii) Registered nurse; and

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

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

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

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

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

(5) **Service requirements.**

(A) Therapeutic Services are to include the following:

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

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

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

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

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

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

(C) Interchangeable services which include the following:

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

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

(iii) Medication Training and Support; and

(iv) Expressive therapy.

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

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

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

(B) Medical director must be a licensed psychiatrist.

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

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

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

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

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

(4) **Limitations.** Services must be offered at a minimum of 4 days per week at least 3 hours per day. Behavioral Health Rehabilitation Group size is limited to a maximum of 8 individuals as clinically appropriate given

diagnostic and developmental functioning. Children under age 6 are not eligible for behavioral health rehabilitation services, unless a prior authorization for children ages 4 and 5 has been granted by OHCA or its designated agent based on a finding of medical necessity.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) **Limitations.**

(A) **Transportation.** Travel time to and from PSR treatment is not compensable. Group PSR services do not qualify for the OHCA transportation program, but OHCA will arrange for transportation for those who require specialized transportation equipment.

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

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

or supporting the defined learning objectives of the member for the entire claimed time.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(F) **Progress Notes.** In accordance with OAC 317:30-5-241.1, the behavioral health service plan developed by the LBHP or Licensure Candidate must include the member's strengths, functional assets, weaknesses or liabilities, treatment goals, objectives and methodologies that are specific and time-limited, and defines the services to be performed by the practitioners and others who comprise the treatment team. When PSR services are prescribed, the plan must address objectives that are specific, attainable, realistic, and time-limited. The plan must include the appropriate treatment coordination to achieve the maximum reduction of the mental and/or behavioral health disability and to restore the member to their best possible functional level. Progress notes for PSR day programs ~~may be in the form of daily summary or weekly summary notes.~~must be documented in accordance with the requirements found in 317:30-5-248(5). Progress notes for all other Behavioral Health Rehabilitation services must ~~include the following:~~be documented in accordance with the requirements found in 317:30-5-248(3).

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

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

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

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

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

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

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

~~(viii) Signature of the lead qualified provider; and~~

~~(ix) Credentials of the lead qualified provider;~~

(G) **Additional documentation requirements.**

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

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

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

(i) Room and board;

(ii) educational costs;

(iii) supported employment; and

(iv) respite.

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

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

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

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

(4) **Qualified ~~providers~~practitioners.** CM II, CADC ~~or~~, LBHP or Licensure Candidate.

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

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

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

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

(2) **Limitations.**

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

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

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

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

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

(A) a member's response to medication;

(B) compliance with the medication regimen;

(C) medication benefits and side effects;

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

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

[OAR Docket #15-504; filed 6-12-15]

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

[OAR Docket #15-508]

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PERMANENT final adoption

RULES:

Subchapter 5. Individual Providers and Specialties

Part 22. Health Homes [NEW]

317:30-5-250. [NEW]

317:30-5-251. [NEW]

317:30-5-252. [NEW]

317:30-5-253. [NEW]

317:30-5-254. [NEW]

(Reference APA WF # 14-16)

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Section 2703 of the Affordable Care Act (Public Law 111-148); Section 1945 of Social Security Act

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Subchapter 5. Individual Providers and Specialties
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n/a
ANALYSIS:
Rules are added to create coverage guidelines for Health Homes. Health Homes are created to promote enhanced integration and coordination of primary, acute, behavioral health, and long-term services and supports for persons across the lifespan with chronic illness. Additionally, rules are added to make a distinction between LBHPs and Licensure Candidates.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 22. HEALTH HOMES

317:30-5-250. Purpose

Health Homes for Individuals with Chronic Conditions are created to promote enhanced integration and coordination of primary, acute, behavioral health, and long-term services and supports for persons across the lifespan with chronic illness. The purpose of the Health Home is to improve the health status of SoonerCare members with Serious Mental Illness or Serious Emotional Disturbance by promoting wellness and prevention and to improve access and continuity in health care for these members by supporting coordination and integration of primary care services in specialty behavioral health settings.

317:30-5-251. Eligible providers

(a) **Agency requirements.** Providers of Health Home (HH) services are responsible for providing HH services to qualifying individuals within the provider's specified service area. Qualifying providers must be:

(1) Certified by the Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS) as a Community Mental Health Center under OAC 450:17; or

(2) Accredited as a provider of outpatient behavioral health services from one of the national accrediting bodies; or

(3) Certified by ODMHSAS as a Mental Illness Service Program pursuant to OAC 450:27; or

(4) Certified by ODMHSAS as a Program of Assertive Community Treatment (PACT) pursuant to OAC 450:55.

(5) In addition to the accreditation/certification requirements in (1) - (4), providers must also have provider specific credentials from ODMHSAS for Health Home Services (OAC 450:17; OAC 450:27; OAC 450:55).

(b) **Health Home team.** Health Homes will utilize an interdisciplinary team of professionals and paraprofessionals to identify an individual's strengths and needs, create a unified plan to empower persons toward self-management and coordinate the individual's varied healthcare needs. HH teams will vary in size depending on the size of the member panel and acuity of members. HH team composition will vary slightly between providers working with adults and children.

(1) Health Homes working with adults with Serious Mental Illness (SMI) will utilize a multidisciplinary team consisting of the following:

(A) Health Home Director;

(B) Nurse Care Manager (RN or LPN);

(C) Consulting Primary Care Practitioner (PCP);

(D) Psychiatric Consultant (317:30-5-11);

(E) Certified Behavioral Health Case Manager (CM)(OAC 450:50; 317:30-5-595);

(F) Wellness Coach/Peer Support Specialist (OAC 450:53; 317:30-5-240.3); and

(G) Administrative support.

(2) In addition to the individuals listed in (1)(A) through (G) above, teams working with adults with SMI (PACT teams only) will also have at least one of the following team members:

(A) Licensed Behavioral Health Professional or Licensure Candidate (317:30-5-240.3);

(B) Substance abuse treatment specialist (Licensed Alcohol and Drug Counselor (LADC) or Certified Alcohol and Drug Counselor (CADC); or

(C) Employment specialist.

(3) Health Homes working with children with Serious Emotional Disturbance (SED) will utilize a multidisciplinary team consisting of the following:

(A) Project Director;

(B) Nurse Care Manager (RN or LPN);

(C) Consulting Primary Care Practitioner (PCP);

(D) Psychiatric Consultant (317:30-5-11);
(E) Care Coordinator (CM II Wraparound Facilitator as defined in 317:30-5-595(2)(C);
(F) Family Support Provider (317:30-5-240.3);
(G) Youth/Peer Support Specialist (OAC 450:53; 317:30-5-240.3);
(H) Children's Health Home Specialist; and
(I) Administrative Support.

317:30-5-252. Covered Services

Health Home services are covered for adults with Serious Mental Illness (SMI) and children with Serious Emotional Disturbance (SED) as set forth in this Section unless specified otherwise, and when provided in accordance with a documented care plan. The care plan must be client directed, integrated, and reflect the input of the team (including the involvement of the consulting primary care physician or APRN in managing the medical component of the plan), as well as others the client chooses to involve. Coverage includes the following services:

(1) **Comprehensive Care Management.**

(A) **Definition.** Comprehensive care management services consist of developing a Comprehensive Care Plan to address needs of the whole person and involves the active participation of the Nurse Care Manager, certified Behavioral Health Case Manager, Primary Care Practitioner, the Health Home clinical support staff with participation of other team members, family and caregivers.

(B) **Service requirements.** Comprehensive care management services include the following, but are not limited to:

(i) Identifying high-risk members and utilizing member information to determine level of participation in care management services;
(ii) Assessing preliminary service needs; participating in comprehensive person-centered service plan development; responsible for member physical health goals, preferences and optimal clinical outcomes;
(iii) Developing treatment guidelines that establish clinical pathways for health teams to follow across risk levels or health conditions;
(iv) Monitoring individual and population health status and service use to determine adherence to or variance from best practice guidelines; and
(v) Developing and disseminating reports that indicate progress toward meeting outcomes for member satisfaction, health status, service delivery and cost.

(C) **Qualified professionals.** Comprehensive care management services are provided by a health care team with participation from the client, family and caregivers, consisting of the following required professionals and paraprofessionals:

(i) Nurse Care Manager (RN or LPN within scope of practice);
(ii) Certified Behavioral Health Case Manager; and
(iii) Primary Care Practitioner.

(2) **Care coordination.**

(A) **Definition.** Care coordination is the implementation of the Comprehensive Care Plan with active member involvement through appropriate linkages, referrals, coordination, and follow-up to needed services and supports.

(B) **Service requirements.** Care coordination services include the following, but are not limited to:

(i) Care coordination for primary health care, specialty health care, and transitional care from emergency departments, hospitals and Psychiatric Residential Treatment Facilities (PRTFs);
(ii) Ensuring integration and compatibility of mental health and physical health activities;
(iii) Providing on-going service coordination and link members to resources;
(iv) Tracking completion of mental and physical health goals in member's Comprehensive Care Plan;
(v) Coordinating with all team members to ensure all objectives of the Comprehensive Care Plan are progressing;
(vi) Appointment scheduling;
(vii) Conducting referrals and follow-up monitoring;
(viii) Participating in hospital discharge processes; and
(ix) Communicating with other providers and members/family.

(C) **Qualified professionals.** Team members are responsible to ensure implementation of the Comprehensive Care Plan, which includes mental health goals, physical health goals, and other life domain goals for achievement of clinical outcomes. Care coordination services are provided by a primary care practitioner-led team which includes the following professionals:

(i) Nurse Care Manager (RN or LPN); and
(ii) Certified Behavioral Health Case Managers.

(3) **Health promotion.**

(A) **Definition.** Health promotion consists of providing health education specific to the member's chronic condition.

(B) **Service requirements.** Health promotion will minimally consist of the following, but is not limited to:

(i) Providing health education specific to member's condition;
(ii) Developing self-management plans with the member;
(iii) Providing support for improving social networks and providing health promoting lifestyle interventions including:

(I) Substance use prevention;

(II) Smoking prevention and cessation;
(III) Obesity reduction and prevention;
(IV) Nutritional counseling; and
(V) Increasing physical activity.

(C) **Qualified professionals.** Health promotion services must be provided by the Primary Care Practitioner, Registered Nurse Care Manager (or LPN within full scope of practice) and the Wellness Coach or Health Home Specialist at the direction of the Health Home Director.

(4) **Comprehensive transitional care.**

(A) **Definition.** Care coordination services for comprehensive transitional care are designed to streamline plans of care, reduce hospital admissions and interrupt patterns of frequent hospital emergency department use.

(B) **Service requirements.** In conducting comprehensive transitional care, the Nurse Care Manager and the case manager will work as co-leads. The duties of the Nurse Care Manager or the case manager include, but are not limited to the following:

(i) Developing contracts or Memorandums of Understanding (MOUs) with regional hospitals or system(s) to ensure a formalized structure for transitional care planning, to include communication of inpatient admissions and discharges of Health Home members;
(ii) Maintaining a mutual awareness and collaboration to identify individuals seeking emergency department services that may benefit from connection with a Health Home site; and
(iii) Motivate hospital staff to notify the Health Home staff of such opportunities.

(5) **Individual and family support services.**

(A) **Definition.** Individual and family support services assist individuals in accessing services that will reduce barriers and improve health outcomes, with a primary focus on increasing health literacy, the ability of the member to self- manage their care, and facilitate participation in the ongoing revision of their Comprehensive Care Plan.

(B) **Service requirements.** Individual and family support services include, but are not limited to:

(i) Teaching individuals and families self-advocacy skills;
(ii) Providing peer support groups;
(iii) Modeling and teaching how to access community resources;
(iv) Assisting with obtaining and adhering to medications and other prescribed treatments; and
(v) Identifying resources to support the member in attaining their highest level of health and functioning in their families and in the community, including transportation to medically necessary services.

(C) **Qualified individuals.** Individual and family support service activities must be provided by one of the following:

(i) Wellness Coaches/Recovery support specialist/Children's Health Home specialist; or
(ii) Care coordinators; or
(iii) Family Support Providers.

(6) **Referral to community and social support services.**

(A) **Definition.** Provide members with referrals to community and social support services in the community.

(B) **Service requirements.** Providing assistance for members to obtain and maintain eligibility for the following services as applicable, including but not limited to:

(i) Healthcare;
(ii) Disability benefits;
(iii) Housing;
(iv) Transportation;
(v) Personal needs; and
(vi) Legal services.

(C) **Limitations.** For members with Developmental Disabilities, the Health Home will refer to and coordinate with the approved Developmental Disabilities case management entity for these services.

317:30-5-253. Reimbursement

(a) In order to be eligible for payment, HHs must have an approved Provider Agreement on file with OHCA. Through this agreement, the HH assures that OHCA's requirements are met and assures compliance with all applicable Federal and State regulations. These agreements are renewed annually with each provider.

(b) A Health Home may bill up to three months for outreach and engagement to a member attributed to but not yet enrolled in a Health Home. The reimbursement for outreach and engagement is limited to once per month and is not reimbursable in the same month that the HH receives reimbursement for qualified HH services.

(c) The HH will be reimbursed a monthly care coordination payment upon successful submission of a claim for one or more of the covered services listed in 317:30-5-251.

317:30-5-254. Limitations

(a) Children/families for whom case management services are available through OKDHS/OJA staff are not eligible for concurrent Health Home services.

(b) The following services will not be reimbursed separately for individuals enrolled in a Health Home:

(1) Targeted case management;
(2) Service Plan Development, low complexity;
(3) Medication training and support;
(4) Peer to Peer support (family support);
(5) Medication management and support and coordination linkage when provided within a Program of Assertive Community Treatment (PACT);
(6) Medication reminder;
(7) Medication administration;

(8) Outreach and engagement.

[OAR Docket #15-508; filed 6-12-15]

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

[OAR Docket #15-500]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 35. Rural Health Clinics
317:30-5-355.1. [AMENDED]
317:30-5-356. [AMENDED]
317:30-5-357. [AMENDED]
317:30-5-361. [AMENDED]
Part 75. Federally Qualified Health Centers
317:30-5-664.3. [AMENDED]
317:30-5-664.4. [REVOKED]
317:30-5-664.12. [AMENDED]
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INCORPORATIONS BY REFERENCE:
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ANALYSIS:
Rules are revised to limit encounters within Federally Qualified Health Centers (FQHC) and Rural Health Clinic Services (RHC).
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 35. RURAL HEALTH CLINICS

317:30-5-355.1. Definition of services

The RHC benefit package, as described in Title 42 of the Code of Federal Regulations (CFR), part 440.20, consists of two components: RHC Services and Other Ambulatory Services.

(1) **RHC services.** RHC services are covered when furnished to a member at the clinic or other location, including the member's place of residence. These services are described in this Section.

(A) **Core services.** As set out in Federal Regulations at 42 CFR 440.20(b), RHC "core" services include, but are not limited to:

(i) Physician's services;

(ii) Services and supplies incident to a physician's services;

(iii) Services of advanced practice nurses (APNs), physician assistants (PAs), nurse midwives (NMs) or specialized advanced practice nurse practitioners;

(iv) Services and supplies incident to the services of APNs and PAs (including services furnished by nurse midwives);

(v) Visiting nurse services to the homebound;

(vi) Clinical psychologist (CP) and clinical social worker (CSW) services;

(vii) Services and supplies incident to the services of CPs and CSWs.

(B) **Physicians' services.** In addition to the professional services of a physician, and services provided by an APN, PA and NMW which would be covered as RHC services under Medicare, certain primary preventive services are covered under the SoonerCare RHC benefit. The services must be furnished by or under the direct supervision of a RHC practitioner who is a clinic employee:

(i) prenatal and postpartum care;

(ii) screening examination under the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program for members under 21;

(iii) family planning services;

(iv) medically necessary screening mammography and follow-up mammograms when medically necessary.

(C) **Services and supplies "incident to".** Services and supplies incident to the service of a physician, physician assistant, advanced practice nurse, clinical psychologist, or clinical social worker are covered if the service or supply is:

(i) a type commonly furnished in physicians' offices;

(ii) a type commonly rendered either without charge or included in the rural health clinic's bill;

(iii) furnished as an incidental, although integral, part of a physician's professional services;

(iv) Drugs and biologicals which cannot be self-administered or are specifically covered by Medicare law, are included within the scope of RHC services. Drugs and biologicals commonly used in life saving procedures, such as analgesics, anesthetics (local), antibiotics, anticonvulsants, antidotes and emetics, serums and toxoids are not billed separately.

(D) **Visiting nurse services.** Visiting nurse services are covered if:

(i) the RHC is located in an area in which the Centers for Medicare and Medicaid Services (CMS) has determined there is a shortage of home health agencies;

(ii) the services are rendered to members who are homebound;

(iii) the member is furnished nursing care on a part time or intermittent basis by a registered nurse, licensed practical nurse or licensed vocational nurse who is employed by or receives compensation for the services from the RHC; and

(iv) the services are furnished under a written plan of treatment.

(E) **RHC encounter.** RHC "core" services (including preventive services, i.e., prenatal, EPSDT or family planning) are part of an all-inclusive visit. A "visit" means a face-to-face encounter between a clinic patient and a RHC health professional (i.e., physicians, physician assistants, advanced practice nurses, nurse midwives, clinical psychologists and clinical social workers). Encounters with more than one health professional and multiple encounters with the same health professional that takes place on the same day and a single location, constitute a single visit except when the member, after the first encounter, suffers illness or injury requiring additional diagnosis or treatment. Payment is made for one encounter per member per day. Medical review will be required for additional visits for children. Payment is also limited to four visits per member per month for adults.

(F) **Off-site services.** RHC services provided off-site of the clinic are covered as long as the RHC has a compensation arrangement with the RHC practitioner that SoonerCare reimbursement is made to the RHC and the RHC practitioner receives his or her compensation from the RHC. The rural health clinic must have a written contract with the physician and other RHC "core" practitioners that specifically identify how the rural health clinic services provided off-site are to be billed to SoonerCare. It is expected that services provided in off-site settings are, in most cases, temporary and intermittent, i.e., when the member cannot come to the clinic due to health reasons.

(2) **Other ambulatory services.** A Rural Health Clinic must provide other items and services which are not "RHC services" as described in (a)(1) of this Section, and are separately billable to the SoonerCare program. Coverage of services are based upon the scope of coverage under the SoonerCare program.

(A) Other ambulatory services include, but are not limited to:

(i) dental services for members under age 21;

(ii) optometric services;

(iii) clinical lab tests performed in the RHC lab, including the lab tests required for RHC certification;

(iv) technical component of diagnostic tests such as x-rays and EKGs (interpretation of the test provided by the RHC physician is included in the encounter rate);

(v) durable medical equipment;

(vi) emergency ambulance transportation;

(vii) prescribed drugs;

(viii) prosthetic devices (other than dental) which replace all or part of an internal body organ (including colostomy bags) and supplies directly related to colostomy care and the replacement of such devices;

(ix) specialized laboratory services furnished away from the clinic;

(x) inpatient services;

(xi) outpatient hospital services.

(B) Payment is made directly to the RHC on an encounter basis for on-site dental services by a licensed dentist or optometric services by a licensed optometrist for members under age 21. Encounters are billed as one of the following:

(i) **EPSDT dental screening.** An EPSDT dental screening includes oral examination, prophylaxis and fluoride treatment, charting of needed treatment, and, if necessary, x-rays (including two bite wing films). This service must be filed on claim form ADM-36-D for EPSDT reporting purposes.

(ii) **Dental encounter.** A dental encounter consists of all dental treatment other than a dental screening. This service must be billed on the ADM-36-D.

(iii) **Visual analysis.** Visual analysis (initial or yearly) for a child with glasses, or a child who needs glasses, or a medical eye exam. This includes the refraction and medical eye health evaluation. Glasses must be billed separately. Payment is limited to two glasses per year. Any glasses beyond this limit must be prior authorized and determined to be medically necessary.

(C) Services listed in (a)(2)(A), (v)-(viii), of this Section, furnished on-site, require separate provider agreements with the OHCA. Service item (a)(2)(A)(iii) does not require a separate contract when furnished on-site, however, certain conditions of participation apply. (Refer to OAC 317:30-5-361 for conditions.)

(D) Other ambulatory services provided off-site by independent practitioners (through subcontracting agreements or arrangements for services not available at the clinic) must be billed to the SoonerCare program by the provider rendering the service. Independent practitioners must meet provider eligibility criteria and must have a current contract with the OHCA.

317:30-5-356. Coverage for adults

Payment is made to rural health clinics for adult services as set forth in this Section.

(1) **RHC services.** ~~Payment is limited to four visits per member per month.~~Payment is made for one encounter per member per day. Payment is also limited to four visits per member per month. Refer to OAC 317:30-1, General Provisions, and OAC 317:30-3-65.2 for exceptions to ~~this~~the four visit limit for children under the Early and Periodic Screening, Diagnosis and Treatment Program (EPSDT). Additional preventive service exceptions include:

(A) **Obstetrical care.** A Rural Health Clinic should have a written contract with its physician, nurse midwife, advanced practice nurse, or physician assistant that specifically identifies how obstetrical care will be billed to SoonerCare, in order to avoid duplicative billing situations. The agreement should also specifically identify the physician's compensation for rural health and non-rural health clinic (other ambulatory) services.

(i) If the clinic compensates the physician, nurse midwife or advanced practice nurse to provide obstetrical care, then the clinic must bill the SoonerCare program for each prenatal visit using the appropriate CPT evaluation and management codes.

(ii) If the clinic does not compensate its practitioners to provide obstetrical care, then the independent practitioner must bill the OHCA for prenatal care according to the global method described in the SoonerCare provider specific rules for physicians, certified nurse midwives, physician assistants, and advanced practice nurses (refer to OAC 317:30-5-22).

(iii) Under both billing methods, payment for prenatal care includes all routine or minor medical problems. No additional payment is made to the prenatal provider except in the case of a major illness distinctly unrelated to pregnancy.

(B) **Family planning services.** Family planning services are available only to members with reproductive capability. Family planning visits do not count as one of the four RHC visits per month.

(2) **Other ambulatory services.** Services defined as "other ambulatory" services are not considered a part of a RHC visit and are therefore billable to the SoonerCare program by the RHC or provider of service on the appropriate claim forms. Other ambulatory services are subject to the same scope of coverage as other SoonerCare services billed to the program, i.e., limited adult services and some services for under 21 subject to same prior authorization process. Refer to OAC 317:30-1, General Provisions, and OAC 317:30-3-57, 317:30-5-59, and 317:30-3-60 for general coverage and exclusions under the SoonerCare program. Some specific limitations are applicable to other ambulatory services as set forth in specific provider rules and excerpted as follows: Coverage under optometrists for adults is limited to treatment of eye disease not related to refractive errors. There is no coverage for eye exams for the purpose of prescribing eyeglasses, contact lenses or other visual aids. (See OAC 317:30-5-431.)

317:30-5-357. Coverage for children

Coverage for rural health clinic services and other ambulatory services for children include the same services as for adults in addition to the following:

(1) The receipt of an Early and Periodic Screening, Diagnosis and Treatment (EPSDT) examination by a Medicaid eligible individual under age 21 renders that individual child eligible for all necessary follow-up care, whether or not the medically necessary services are covered under the Medicaid program. An EPSDT exam performed by a RHC must be billed on the appropriate claim form with the appropriate Preventative Medicine procedure code from the Current Procedural Terminology Manual (CPT). If an EPSDT screening is billed, a RHC encounter should not be billed on the same day. Refer to OAC 317:30-3-47 through 317:30-3-54 for coverages under EPSDT).

(2) Under EPSDT, coverage is allowed for visual screenings and eyeglasses to correct visual defects. Payment is limited to two glasses per year. Any glasses beyond this limit must be prior authorized and determined to be medically necessary.

(3) An EPSDT screening is considered a comprehensive examination. A provider billing the Medicaid program for an EPSDT screen may not bill any other visits for that patient on that same day. It is expected that the screening provider will perform necessary treatment as part of the screening charge. Additional services such as

tests, immunizations, etc., required at the time of screening may be billed independently from the screening.

(4) The administration fee for immunizations should be billed if provided at the same time as a scheduled EPSDT examination.

(5) Payment may be made directly to the RHC for the professional services of physician assistants performing EPSDT screenings within the certified RHC. The claim form must include the signature of the supervising physician.

317:30-5-361. Billing

(a) **Encounters.** Payment is made for one ~~type of~~ encounter per member per day. Medical review will be required for additional visits for children. Payment is also limited to four visits per member per month for adults. Rural health clinics must bill the combined fees of all "core" services provided during an encounter on the appropriate claim form. Claims must include reasonable and customary charges.

(1) **RHC.** The appropriate revenue code is required. No HCPC or CPT code is required.

(2) **Mental health.** Mental health services must include a revenue code and a HCPCS code.

(3) **Obstetrical care.** The appropriate revenue code and HCPCS code are required. The date the member is first seen is required. The primary pregnancy diagnosis code is also required. Secondary diagnosis codes are used to describe complications of pregnancy. Delivery must be billed by the independent practitioner who has a contract with the OHCA.

(4) **Family planning.** Family planning encounters require a revenue code, HCPCS code, and a family planning diagnosis.

(5) **EPSDT screening.** EPSDT screenings must be billed by the attending provider using the appropriate Preventative Medicine procedure code from the Current Procedural Terminology Manual (CPT).

(6) **Dental.** Dental services for children must be billed on the appropriate dental claim form.

(7) **Visual analysis.** Optometric services for children are billed using the appropriate revenue code and a HCPCS code.

(b) **Services billed separately from encounters.** Other ambulatory services and preventive services itemized separately from encounters must be billed using the appropriate revenue, HCPC and/or CPT codes. Claims must include reasonable and customary charges.

(1) **Laboratory.** The rural health clinic must be CLIA certified for specialized laboratory services performed. Laboratory services must be itemized separately using the appropriate CPT or HCPCS code.

(2) **Radiology.** Radiology must be identified using the appropriate CPT or HCPC code with the technical component modifier. Radiology services are paid at the technical component rate. The professional component is included in the encounter rate.

(3) **Immunizations.** The administration fee for immunizations provided on the same day as the EPSDT exam is billed separately.

(4) **Contraceptives.** Contraceptives are billed independently from the family planning encounter. A revenue code and the appropriate CPT or HCPC codes are required. The following are examples:

(A) DepoProvera 150 mg. (Medroxyprogesterone Acetate).

(B) Insertion and implantation of a subdermal contraceptive device.

(C) Removal, implantable contraceptive devices.

(D) Removal, with reinsertion, implantable contraceptive device.

(E) Insertion of intrauterine device (IUD).

(F) Removal of intrauterine device.

(G) ParaGard IUD.

(H) Progestasert IUD.

(5) **Glasses.** Glasses prescribed by a licensed optometrist are billed using the appropriate revenue code and HCPCS code. Payment is limited to two glasses per year. Any glasses beyond this limit must be prior authorized and determined to be medically necessary.

(6) **Telemedicine.** The originating site facility fee for telemedicine services is not a rural health clinic service. When a rural health clinic serves as the originating site, the originating site facility fee is paid separately from the clinic's all-inclusive rate.

PART 75. FEDERALLY QUALIFIED HEALTH CENTERS

317:30-5-664.3. Health Center encounters

(a) Health Center encounters that are billed to the OHCA must meet the definition in this Section and are limited to services covered by OHCA. Only encounters provided by the authorized health care professional on the approved FQHC state plan pages within the scope of their licensure trigger a PPS encounter rate.

(b) An encounter is defined as a face-to-face contact between a health care professional and a member for the provision of defined services through a Health Center within a 24-hour period ending at midnight, as documented in the member's medical record.

(c) ~~For information about multiple encounters, refer to OAC 317:30-5-664.4.~~A Health Center may bill for one medically necessary encounter per 24 hour period. Medical review will be required for additional visits for children. Payment is limited to four visits per member per month for adults.

(d) Services considered reimbursable encounters (including any related medical supplies provided during the course of the encounter) include:

(1) medical;

(2) diagnostic;

(3) dental, medical and behavioral health screenings;

(4) vision;

(5) physical therapy;

(6) occupational therapy;
(7) podiatry;
(8) behavioral health;
(9) speech;
(10) hearing;
(11) medically necessary Health Center encounters with a RN or LPN and related medical supplies (other than drugs and biologicals) furnished on a part-time or intermittent basis to home-bound members (refer to OAC 317:30-5-661.3);
(12) any other medically necessary health services (i.e. optometry and podiatry) are also reimbursable as permitted within the Health Center's scope of services when medically reasonable and necessary for the diagnosis or treatment of illness or injury, and must meet all applicable coverage requirements.

(e) Services and supplies incident to a physician's professional service are reimbursable within the encounter if the service or supply is:
(1) of a type commonly furnished in physicians' offices;
(2) of a type commonly rendered either without a charge or included in the health clinic's bill;
(3) furnished as an incidental, although integral, part of a physician's professional services;
(4) furnished under the direct, personal supervision of a physician; and
(5) in the case of a service, furnished by a member of the clinic's health care staff who is an employee of the clinic.

(f) Only drugs and biologicals which cannot be self-administered are included within the scope of this benefit.

317:30-5-664.4. Multiple encounters at Health Centers [REVOKED]

~~(a) A Health Center may bill for more than one medically necessary encounter per 24 hour period under certain conditions.~~
~~(b) It is intended that multiple medically necessary encounters will occur on an infrequent basis.~~
~~(c) A Center may not develop Center procedures that routinely involve multiple encounters for a single date of service, unless medical necessity warrant multiple encounters.~~
~~(d) Each service must have distinctly different diagnoses in order to meet the criteria for multiple encounters. For example, a medical visit and a dental visit on the same day are considered different services with distinctly different diagnoses.~~
~~(e) Similar services, even when provided by two different health care practitioners, are not considered multiple encounters.~~

317:30-5-664.12. Determination of Health Center PPS rate

(a) **Methodology.** The methodology for establishing each facility's PPS rate is found in Attachment 4.19 B of the OHCA's State Plan, as amended effective January 1, 2001, and incorporated herein by reference.

(b) **Scope of service adjustment.** If a Center significantly changes its scope of services, the Center may request in writing that new baseline encounter rates be determined. Adjustments to encounter rates are made ~~only if the change in the scope of services results in the inclusion of behavioral health services or dental services or a difference of at least five percent from the Center's current costs (other than overhead).~~if it is determined that a significant change in the scope-of-service has occurred which impacts the base rate, as indicated within the State Plan. If there is a change in scope-of-service, it is the responsibility of the FQHC to request OHCA to review services that have had a change to the scope-of-service. The OHCA may initiate a rate adjustment in accordance with procedures in the State Plan, based on audited financial statements or cost reports, if the scope of services has been modified ~~to include behavioral health services or dental services~~ or would otherwise result in a change~~ of at least five percent from~~to the Center's current rate. If a new rate is set, the rate ~~change takes effect on the latter of the change of services date or the date of application to the OHCA for rate change.~~will be effective on the date the change in scope-of-service was implemented.

[OAR Docket #15-500; filed 6-12-15]

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

[OAR Docket #15-525]

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Part 41. Family Support Services
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Part 43. Agency Companion, Specialized Foster Care, Daily Living Supports, Group Homes, and Community Transition Services
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Part 51. Habilitation Services
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The proposed revisions are to implement policy changes recommended during the Oklahoma Department of Human Services (DHS) Developmental Disabilities Services (DDS) annual policy review process. The recommendations will also assist DDS with being in full compliance with the new federal regulation for Home and Community-Based Services with regard to members and their settings.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 41. FAMILY SUPPORT SERVICES

317:30-5-412. Description of services

Family support services include services identified in ~~paragraphs~~ (1) through (6) of this section. Providers of any family support service must have an applicable SoonerCare Provider Agreement for Home and Community Based Services (HCBS) Waiver Providers for persons with developmental disabilities.

(1) **Transportation services.** Transportation services are provided per ~~OAC~~Oklahoma Administrative Code (OAC) 317:40-5-103.

(2) **Assistive technology (AT) devices and services.** ~~Assistive technology~~AT devices and services~~,~~ are provided ~~in accordance with~~per OAC 317:40-5-100.

(3) **Architectural modification.** Architectural modification services are provided per OAC 317:40-5-101.

(4) **Family training.**

(A) **Minimum qualifications.**

(i) Individual providers must have a ~~DDSD~~Developmental Disabilities Services (DDS) Family Training application and training curriculum approved by ~~DDSD~~DDS staff. Individual providers must hold current licensure, certification or a Bachelor's Degree in a human service field related to the approved training curriculum~~.~~, or other Bachelor's Degree combined with a minimum of five years' experience in the intellectual disabilities field. Only individuals named on the SoonerCare Provider Agreement to provide Family Training services may provide service to members~~;~~.

(ii) Agency or business providers must have a ~~DDSD~~(DDS) Family Training application and training curriculum approved by ~~DDSD~~DDS staff. Agency or business provider training staff must hold current licensure, certification, or a ~~Bachelors Degree~~Bachelor's Degree in a human service field related to the approved training curriculum~~.~~, or other Bachelor's Degree combined with a minimum of five years experience in the intellectual disabilities field. The credentials of new training staff hired by an approved ~~DDSD~~DDS HCBS Family Training agency or business provider must be submitted to and approved by the ~~DDS Dprogram~~DDS programs manager for Family Training prior to new staff training members or ~~their~~members' families.

(B) **Description of services.** Family ~~training~~Training services include instruction in skills and knowledge pertaining to the support and assistance of members. Services are:

(i) intended to allow families to become more proficient in meeting the needs of members who are eligible;

(ii) provided in any community setting;

(iii) provided in either group, consisting of two to 15 persons, or individual formats; and

(iv) for members served through ~~DDSD~~DDS HCBS Waivers and their families. For the purpose of this service, family is defined as any person who lives with, or provides care to a member served on the Waiver~~.~~;

(v) included in the member's Individual Plan (Plan) and arranged through the member's case manager; and

(vi) intended to yield outcomes as defined in the member's Plan.

(C) **Coverage limitations.** Coverage limitations for family training are:

(i) ~~Individual~~individual family training; Limitation: $5,500 per Plan of Care year;

(ii) ~~Group~~group family training; Limitation: $5,500 per Plan of Care year;

(iii) ~~Session~~session rates for individual and group sessions ~~should~~do not exceed a range comparable to rates charged by persons with similar credentials providing similar services; and

(iv) ~~Rates~~rates must be justified based on costs incurred to deliver the service and ~~will be~~are evaluated to determine if costs are reasonable.

(D) **Documentation requirements.** Providers must maintain documentation fully disclosing the extent of services furnished that specifies:

(i) the service date;

(ii) the start and stop time for each session;

(iii) the signature of the trainer;

(iv) the credentials of the trainer;

(v) the specific issues addressed;

(vi) the methods used to address issues;

(vii) the progress made toward outcomes;

(viii) the member's response to the session or intervention; and

(ix) any new issues identified during the session.

(x) ~~Progress~~progress reports for each member served must be submitted to the ~~DDSD~~DDS case manager per OAC 340:100-5-52~~.~~; and

(xi) ~~An~~an annual report of the provider's overall Family Training program, including statistical information about members served, their satisfaction with services, trends observed, changes made in the program and program, recommendations must be submitted to the ~~DDSD program~~DDS programs manager for Family Training on an annual basis.

(5) **Family counseling.**

(A) **Minimum qualifications.** Counseling providers must hold current licensure as~~a~~ clinical social ~~worker~~workers, ~~psychologist~~psychologists, ~~or~~ licensed professional ~~counselor~~counselors (LPC)~~.~~, or licensed marriage and family therapists (LMFT).

(B) **Description of services.** Family counseling offered to members and ~~their~~his or her natural, adoptive, or foster family members, helps to develop and maintain healthy, stable relationships among all family members.

(i) Emphasis is placed on the acquisition of coping skills by building upon family strengths.

(ii) Knowledge and skills gained through family counseling services increase the likelihood ~~that~~ the member remains in or returns to his or her own home.

(iii) All family counseling needs are documented in the member's Plan.

(iv) Services are rendered in any confidential setting where the member/family resides or the provider conducts business.

(C) **Coverage limitations.** Coverage limitations for family counseling are:

(i) ~~Individual~~individual family counseling; ~~Unit~~unit: 15 minutes; ~~Limitation~~limitation: 400 units per Plan of Care year; and

(ii) ~~Group~~group,~~(six person maximum)~~six person maximum, family counseling; ~~Unit~~unit: 30 minutes; ~~Limitation~~limitation: 225 units per Plan of Care year.

(D) **Documentation requirements.** Providers must maintain documentation fully disclosing the extent of services furnished that specifies:

(i) the service date;

(ii) the start and stop time for each session;

(iii) the signature of the therapist;

(iv) the credentials of the therapist;

(v) the specific issues addressed;

(vi) the methods used to address issues;

(vii) the progress made toward resolving issues and outcomes;

(viii) the member's response to the session or intervention; and

(ix) any new issue identified during the session.

(E) **Reporting requirements.** Progress reports for each member served must be submitted to the ~~DDSD~~DDS case manager per OAC 340:100-5-52.

(6) **Specialized medical supplies.** Specialized medical supplies are provided per OAC 317:40-5-104.

PART 43. AGENCY COMPANION, SPECIALIZED FOSTER CARE, DAILY LIVING SUPPORTS, GROUP HOMES, AND COMMUNITY TRANSITION SERVICES

317:30-5-422. Description of services

Residential supports include:

(1) agency companion services (ACS) per ~~OAC~~Oklahoma Administrative Code (OAC)317:40-5;

(2) specialized foster care (SFC) per OAC 317:40-5;

(3) daily living supports (DLS):

(A) Community Waiver per OAC 317:40-5-150; and

(B) Homeward Bound Waiver per OAC 317:40-5-153;

(4) group home services provided per OAC 317:40-5-152; and

(5) community transition services (CTS).

(A) Minimum qualifications. The provider must enter into contractual agreements with the Oklahoma Health Care Authority (OHCA) to provide ACS, habilitation training specialist (HTS) services, or DLS, in addition to a contract to provide CTS.

(B) Description of services. CTS is a one-time setup expense for members transitioning from an intermediate care facility for ~~the mentally retarded (ICF/MR)~~individuals with intellectual disabilities (ICF/IID) or provider-operated residential setting to the member's own home or apartment. The cost per member of ~~Community Transition Services~~CTS cannot exceed limitations set forth by OHCA. The member's name must be on the lease, deed or rental agreement. CTS:

(i) are furnished only when the member is unable to meet such expense and must be documented in the member's Individual Plan (IP);

(ii) include security deposits, essential furnishings, such as major appliances, dining table/chairs, bedroom set, sofa, chair, window coverings, kitchen pots/pans, dishes, eating utensils, bed/bath linens, kitchen dish towel/potholders, a one month supply of laundry/cleaning products, and setup fees or deposits for initiating utility service, including phone, electricity, gas, and water . CTS also includes moving expenses, services/items necessary for the member's health and safety, such as pest eradication, allergen control, a one-time cleaning prior to occupancy, flashlight, smoke detector, carbon monoxide detector, first aid kit, fire extinguisher, and a tempering valve or other

anti-scald device when determined by the Team necessary to ensure the member's safety; and

(iii) does not include:

(I) recreational items, such as television, cable, satellite, internet, video cassette recorder (VCR), digital video disc (DVD) player, compact disc (CD) player, MP3 player, or computer used primarily as a diversion or recreation;

(II) monthly rental or mortgage ~~expense~~expenses;

(III) food;

(IV) personal hygiene items;

(V) disposable items, such as paper plates/napkins, plastic utensils, disposable food storage bags, aluminum foil, and plastic wrap;

(VI) items that ~~could be~~are considered decorative, such as rugs, pictures, bread box, canisters, or ~~more than one basic~~a clock;

(VII) any item not considered an essential ~~basic~~one-time, one-time expense; or

(VIII) regular ongoing utility charges~~.~~;

(iv) prior approval for exceptions and/or questions regarding eligible items and/or expenditures are directed to the ~~program manager~~programs manager for community transition services at ~~OKDHS/DDSD~~DHS DDS state office~~.~~;

(v) authorizations are issued for the date a member transitions;

(vi) may only be authorized for members approved for the Community Waiver; and

(vii) may not be authorized for items purchased more than 30 days after the date of transition.

PART 51. HABILITATION SERVICES

317:30-5-482. Description of services

Habilitation services include the services identified in (1) through (15) of this section. Providers of ~~any~~ habilitation ~~service~~services must have an applicable agreement with the Oklahoma Health Care Authority (OHCA) to provide Developmental Disabilities Services ~~Division (DDSD)~~(DDS) Home and Community Based Services (HCBS).

(1) **Dental services.** Dental services are provided per ~~OAC~~Oklahoma Administrative Code (OAC) 317:40-5-112.

(A) **Minimum qualifications.** Providers of dental services must have non-restrictive licensure by the Board of Governors of Registered Dentists of Oklahoma to practice dentistry in Oklahoma ~~by the Board of Governors of Registered Dentists of Oklahoma~~.

(B) **Description of services.** Dental services include services for maintenance or improvement of dental health as well as relief of pain and infection. These services may include:

(i) an oral examination;

(ii) bite-wing x-rays;

(iii) a prophylaxis;

(iv) topical fluoride treatment;

(v) development of a sequenced treatment plan that prioritizes:

(I) elimination of pain;

(II) adequate oral hygiene; and

(III) restoration or improved ability to chew;

(vi) routine training of member or primary caregiver regarding oral hygiene; and

(vii) preventive restorative, replacement, and repair services to achieve or restore functionality, that are provided after appropriate review ~~if~~when applicable, per OAC 317:40-5-112.

(C) **Coverage limitations.** Coverage of dental services is specified in the member's Individual Plan (IP), in accordance with applicable Waiver limits. Dental services are not authorized when recommended for cosmetic purposes.

(2) **Nutrition services.** Nutrition Services are provided per OAC 317:40-5-102.

(3) **Occupational therapy services.**

(A) **Minimum qualifications.** Occupational therapists and occupational therapy assistants must have current, non-restrictive licensure by the Oklahoma State Board of Medical Licensure and Supervision. Occupational therapy assistants must be employed by the occupational therapist.

(B) **Description of services.** Occupational therapy services include evaluation, treatment, and consultation in leisure management, daily living skills, sensory motor, perceptual motor, and mealtime assistance. Occupational therapy services may include the use of occupational therapy assistants, within the limits of ~~their~~the occupational therapist's practice.

(i) Services are:

(I) intended to help the member achieve greater independence to reside and participate in the community; and

(II) rendered in any community setting as specified in the member's ~~IP~~individual plan (IP). The IP must include a practitioner's prescription.

(ii) For purposes of this Section, a practitioner is defined as ~~all~~ medical and osteopathic physicians, physician assistants, and other licensed professionals with prescriptive authority to order occupational therapy services in accordance with the rules and regulations governing the SoonerCare program.

(iii) The provision of services includes a written report or record documentation in the member's record, as required.

(C) **Coverage limitations.** Payment is made for compensable services to the individual occupational therapist for direct services or for services provided by a qualified occupational therapist assistant within

~~their~~the occupational therapist's employment. Payment is made in 15-minute units, with a limit of 480 units per Plan of Care year. Payment is not allowed solely for written reports or record documentation.

(4) **Physical therapy services.**

(A) **Minimum qualifications.** Physical therapists and physical therapist assistants must have ~~a~~ current, non-restrictive licensure with the Oklahoma State Board of Medical Licensure and Supervision. The physical therapist ~~assistant~~ must ~~beemployed by~~employ the physical therapist assistant.

(B) **Description of services.** Physical therapy services include evaluation, treatment, and consultation in locomotion or mobility and skeletal and muscular conditioning to maximize the member's mobility and skeletal/muscular well-being. Physical therapy services may include the use of physical therapist assistants, within the limits of ~~their~~the physical therapist's practice.

(i) Services are intended to help the member achieve greater independence to reside and participate in the community. Services are provided in any community setting as specified in the member's IP. The IP must include a practitioner's prescription.

(ii) For purposes of this Section, a practitioner is defined as ~~all~~a licensed medical and osteopathic physicians, and physician assistants in accordance with the rules and regulations covering the ~~OHCA's~~OHCA SoonerCare program.

(iii) The provision of services includes a written report or record documentation in the member's record, as required.

(C) **Coverage limitations.** Payment is made for compensable services to individual physical therapists for direct services or for services provided by a qualified physical therapist assistant within ~~their~~the physical therapist's employment. Payment is made in 15-minute units with a limit of 480 units per Plan of Care year. Payment is not allowed solely for written reports or record documentation.

(5) **Psychological services.**

(A) **Minimum qualifications.** Qualification as a provider of psychological services requires current, non-restrictive licensure as a psychologist by the Oklahoma Psychologist Board of Examiners, or licensing board in the state in which service is provided.

(B) **Description of services.** Psychological services include evaluation, psychotherapy, consultation, and behavioral treatment. Service is provided in any community setting as specified in the member's IP.

(i) Services are:

(I) intended to maximize a member's psychological and behavioral well-being; and

(II) provided in individual and group~~,~~ formats, with a six person maximum~~, formats~~.

(ii) A minimum of 15 minutes for each individual encounter,~~and~~ 15 minutes for each group encounter, and record documentation of each treatment session is included and required.

(C) **Coverage limitations.**

(i) Limitations for psychological services are:

(I) ~~Description~~description:~~Psychotherapy~~psychotherapy services and behavior treatment services,~~(individual)~~individual:~~Unit~~unit: 15 minutes; and

(II) ~~Description~~description:~~Cognitive~~cognitive/behavioral treatment,~~(group)~~group: ~~Unit~~unit: 15 minutes.

(ii) Psychological services are authorized for a period, not to exceed six months.

(I) Initial authorization is obtained through the Developmental Disabilities Services ~~Division(DDSD)~~ (DDS) case manager, with review and approval by the ~~DDSD~~DDS case management supervisor.

(II) Initial authorization must not exceed 192 units ~~(48 hours of service)~~, 48 hours of service.

(III) ~~Monthly~~Quarterly progress notes must include a statement of hours and ~~type~~types of ~~service~~services provided, and an empirical measure of member status as it relates to each objective in the member's IP.

(IV) ~~If~~When progress notes for each quarter of service provision are not submitted to the ~~DDSD~~DDS case manager ~~for each month of service provision~~, authorization for payment must be withdrawn until such time as progress notes are ~~completed~~submitted.

(iii) Treatment extensions may be authorized by the ~~DDSD~~DDS area manager, based upon evidence of continued need and effectiveness of treatment.

(I) Evidence of continued need of treatment, treatment effectiveness, or both, is submitted by the provider to the ~~DDSD~~DDS case manager and must include, at a minimum, completion of the Service Utilization and Evaluation protocol.

(II) When revising a protective intervention plan (PIP) to accommodate recommendations of a required committee review or an Oklahoma Department of Human Services ~~(OKDHS)~~(DHS) audit, the provider may bill for only one revision. The time for preparing the revision must be clearly documented and must not exceed four hours.

(III) Treatment extensions must not exceed 24 hours ~~(96 units)~~, 96 units, of service, per request.

(iv) The provider must develop, implement, evaluate, and revise the PIP corresponding to the relevant goals and objectives identified in the member's IP.

(v) No more than 12 hours ~~(48 units)~~, 48 units, may be billed for the preparation of a PIP. Any clinical document must be prepared within 45 calendar days of the request. Further, if the document is not prepared, payments are suspended until the requested document is provided.

(vi) Psychological technicians may provide up to 140 billable hours ~~(560 units)~~, 560 units, of service per month to members.

(vii) The psychologist must maintain a record of all billable services provided by a psychological technician.

(6) **Psychiatric services.**

(A) **Minimum qualifications.** Qualification as a provider of psychiatric services requires a current, non-restrictive license to practice medicine in Oklahoma. Certification by the Board of Psychiatry and Neurology or satisfactory completion of an approved residency program in psychiatry is required.

(B) **Description of services.** Psychiatric services include outpatient evaluation, psychotherapy, ~~and~~ medication and prescription management and consultation,and are provided to eligible members ~~who are eligible~~. Services are provided in ~~any~~ community setting ~~as~~ specified in the member's IP.

(i) Services are intended to contribute to the member's psychological well-being.

(ii) A minimum of 30 minutes for encounter and record documentation is required.

(C) **Coverage limitations.** A unit is 30 minutes, with a limit of 200 units, per Plan of Care year.

(7) **Speech/language services.**

(A) **Minimum qualifications.** Qualification as a provider of speech and/or language services requires current, non-restrictive licensure as a speech and/or language pathologist by the State Board of Examiners for Speech Pathology and Audiology.

(B) **Description of services.** Speech therapy includes evaluation, treatment, and consultation in communication and oral ~~motor/feeding~~motor and/or feeding activities provided to eligible members ~~who are eligible~~. Services are intended to maximize the member's community living skills and may be provided in ~~any~~the community setting ~~as~~ specified in the member's IP. The IP must include a practitioner's prescription.

(i) For purposes of this Section, ~~a practitioner is~~practitioners are defined as ~~all~~ licensed medical and osteopathic physicians, ~~and~~ physician assistants, and other licensed professionals with prescriptive authority to order ~~speech/language~~speech and/or language services in accordance with rules and regulations covering the ~~OHCA's~~OHCA SoonerCare program.

(ii) A minimum of 15 minutes for encounter and record documentation is required.

(C) **Coverage limitations.** A unit is 15 minutes, with a limit of 288 units, per Plan of Care year.

(8) **Habilitation training specialist (HTS) services.**

(A) **Minimum qualifications.** Providers must complete the ~~OKDHS DDSD~~DHS DDS sanctioned training curriculum. Residential habilitation providers:

(i) are at least 18 years of age;

(ii) are specifically trained to meet the unique needs of members;

(iii) have not been convicted of, pled guilty to, or pled nolo contendere to misdemeanor assault and battery, or a felony per Section 1025.2 of Title 56 of the Oklahoma Statutes (56 O.S. § 1025.2), unless a waiver is granted per 56 O.S. § 1025.2; and

(iv) receive supervision and oversight from a contracted agency staff with a minimum of four years of any combination of college level education or full-time equivalent experience in serving persons with disabilities.

(B) **Description of services.** HTS services include services to support the member's self-care, daily living, and adaptive and leisure skills needed to reside successfully in the community. Services are provided in community-based settings in a manner that contributes to the member's independence, self-sufficiency, community inclusion, and well-being.

(i) Payment will not be made for:

(I) routine care and supervision ~~that is~~ normally provided by family; or

(II) services furnished to a member by a person who is legally responsible per OAC 340:100-3-33.2.

(ii) Family members who provide HTS services must meet the same standards as providers who are unrelated to the member. HTS staff residing in the same household as the member may not provide services in excess of 40 hours per week. Members who require more than 40 hours per week of HTS services, must use staff members who do not reside in the household and are employed by the member's chosen provider agency to deliver the balance of ~~any~~ necessary support staff hours. Exceptions may be authorized when needed for members who receive services through the Homeward Bound Waiver.

(iii) Payment does not include room and board or maintenance, upkeep, and improvement of the member's or family's residence.

(iv) For members who also receive intensive personal supports (IPS), the member's IP must clearly specify the role of the HTS and person providing IPS to ensure there is no duplication of services.

(v) ~~DDSD~~DDS case management supervisor review and approval is required.

(vi) Pre-authorized HTS services accomplish the same objectives as other HTS services, but are limited to situations where the HTS provider is unable to obtain required professional and administrative oversight from an OHCA approved oversight agency ~~approved by the OHCA~~. For pre-authorized HTS services, the service:

(I) provider ~~will receive~~receives DDS area staff oversight ~~from DDSDarea staff~~; and

(II) must be pre-approved by the ~~DDSD~~DDS director or designee.

(C) **Coverage limitations.** HTS services are authorized ~~as specified in~~per OAC 317:40-5-110, 317:40-5-111, and 317:40-7-13, and ~~OAC~~ 340:100-3-33.1.

(i) A unit is 15 minutes.

(ii) Individual HTS services providers ~~will be~~are limited to a maximum of 40 hours per week regardless of the number of members served.

(iii) More than one HTS may provide care to a member on the same day.

(iv) Payment cannot be made for services provided by two or more HTSs to the same member during the same hours of a day.

(v) A HTS may receive reimbursement for providing services to only one member at any given time. This does not preclude services from being provided in a group setting where services are shared among members of the group.

(vi) HTS providers may not perform any job duties associated with other employment, including ~~on-call~~on-call duties, at the same time they are providing HTS services.

(9) **Self Directed HTS (SD HTS).** SD HTS are provided per OAC 317:40-9-1.

(10) **Self Directed Goods and Services (SD GS).** SD GS are provided per OAC 317:40-9-1.

(11) **Audiology services.**

(A) **Minimum qualifications.** Audiologists must have licensure as an audiologist by the State Board of Examiners for Speech Pathology and Audiology.

(B) **Description of services.** Audiology services include individual evaluation, treatment, and consultation in hearing to eligible members ~~who are eligible~~. Services are intended to maximize the member's auditory receptive abilities. The member's IP must include a practitioner's prescription.

(i) For purposes of this Section, ~~a practitioner is~~practitioners are defined as ~~all~~ licensed medical and osteopathic physicians, and physician assistants in accordance with rules and regulations covering the ~~OHCA's~~OHCA SoonerCare program.

(ii) A minimum of 15 minutes for encounter and record documentation is required.

(C) **Coverage limitations.** Audiology services are provided in accordance with the member's IP.

(12) **Prevocational services.**

(A) **Minimum qualifications.** Prevocational services providers:

(i) are at least 18 years of age;

(ii) complete the ~~OKDHS DDSD~~DHS DDS sanctioned training curriculum;

(iii) have not been convicted of, pled guilty to, or pled nolo contendere to misdemeanor assault and battery, or a felony per 56 O.S. §1025.2, unless a waiver is granted per 56 O.S. §1025.2; and

(iv) receive supervision and oversight by a person with a minimum of four years of any combination of college level education or full-time equivalent experience in serving persons with disabilities.

(B) **Description of services.** Prevocational services are not available to persons who can be served under a program funded per Section 110 of the Rehabilitation Act of 1973 or Section 602(16) and (17) of the Individuals with Disabilities Education Act (IDEA). Services are aimed at preparing a member for employment, but are not job-task oriented. Services include teaching concepts, such as compliance, attendance, task completion, problem solving, and safety.

(i) Prevocational services are provided to members who are not expected to:

(I) join the general work force; or

(II) participate in a transitional sheltered workshop within one year, excluding supported employment programs.

(ii) When compensated, members are paid at less than 50 percent of the minimum wage. Activities included in this service are not primarily directed at teaching specific job skills, but at underlying, habilitative goals, such as attention span and motor skills.

(iii) All prevocational services ~~will be~~are reflected in the member's IP as habilitative, rather than explicit employment objectives.

(iv) Documentation must be maintained in the record of each member receiving this service, noting ~~that~~ the service is not otherwise available through a program funded under the Rehabilitation Act of 1973 or IDEA.

(v) Services include:

(I) center-based prevocational services ~~as specified in~~per OAC 317:40-7-6;

(II) community-based prevocational services ~~as specified in~~per OAC 317:40-7-5;

(III) enhanced community-based prevocational services ~~as specified in~~per OAC 317:40-7-12; and

(IV) supplemental supports as specified in OAC 317:40-7-13.

(C) **Coverage limitations.** A unit of center-based or community-based prevocational services is one hour and payment is based upon the number of hours

the member participates in the service. All prevocational services and supported employment services combined may not exceed ~~$25,000~~$27,000, per Plan of Care year. The following services may not be provided to the same member at the same time as prevocational services:

(i) HTS;

(ii) Intensive Personal Supports;

(iii) Adult Day Services;

(iv) Daily Living Supports;

(v) Homemaker; or

(vi) therapy services such as occupational therapy, physical therapy, nutrition, speech, psychological services, family counseling, or family training except to allow the therapist to assess the individual's needs at the workplace or to provide staff training and as allowed per OAC 317:40-7-6.

(13) **Supported employment.**

(A) **Minimum qualifications.** Supported employment providers:

(i) are at least 18 years of age;

(ii) complete the ~~OKDHS DDSD~~DHS DDS sanctioned training curriculum;

(iii) have not been convicted of, pled guilty to, or pled nolo contendere to misdemeanor assault and battery, or a felony per 56 O.S. §1025.2, unless a waiver is granted per 56 O.S. §1025.2; and

(iv) receive supervision and oversight by a person with a minimum of four years of any combination of college level education or full-time equivalent experience in serving persons with disabilities.

(B) **Description of services.** Supported employment is conducted in a variety of settings, particularly work sites in which persons without disabilities are employed, and includes activities that are outcome based and needed to sustain paid work by members receiving services through HCBS ~~Waiver~~Waivers, including supervision and training.

(i) When supported employment services are provided at a work site in which persons without disabilities are employed, payment:

(I) is made for the adaptations, supervision, and training required by members as a result of their disabilities; and

(II) does not include payment for the supervisory activities rendered as a normal part of the business setting.

(ii) Services include:

(I) job coaching ~~as specified in~~per OAC 317:40-7-7;

(II) enhanced job coaching ~~as specified in~~per OAC 317:40-7-12;

(III) employment training specialist services ~~as specified in~~per OAC 317:40-7-8; and

(IV) stabilization ~~as specified in~~per OAC 317:40-7-11.

(iii) Supported employment services furnished under HCBS ~~Waiver~~Waivers are not available under a program funded by the Rehabilitation Act of 1973 or IDEA.

(iv) Documentation that the service is not otherwise available under a program funded by the Rehabilitation Act of 1973 or IDEA must be maintained in the record of each member receiving this service.

(v) Federal financial participation (FFP) may not be claimed for incentive payment subsidies or unrelated vocational training expenses, such as:

(I) incentive payments made to an employer to encourage or subsidize the employer's participation in a supported employment program;

(II) payments ~~that are~~ passed through to users of supported employment programs; or

(III) payments for vocational training ~~that are~~ not directly related to a member's supported employment program.

(C) **Coverage limitations.** A unit is 15 minutes and payment is made ~~in accordance with~~per OAC 317:40-7-1 through 317:40-7-21. All prevocational services and supported employment services combined cannot exceed ~~$25,000~~$27,000 per Plan of Care year. The ~~DDSD~~DDS case manager assists the member to identify other alternatives to meet identified needs above the limit. The following services may not be provided to the same member, at the same time, as supported employment services:

(i) HTS;

(ii) Intensive Personal Supports;

(iii) Adult Day Services;

(iv) Daily Living Supports;

(v) Homemaker; or

(vi) Therapy services, such as occupational therapy, physical therapy, nutrition, speech, psychological services, family counseling, or family training except to allow the therapist to assess the individual's needs at the workplace or to provide staff training.

(14) **Intensive personal supports (IPS).**

(A) **Minimum qualifications.** IPS provider agencies must have a current provider agreement with OHCA and ~~OKDHS DDSD~~DHS DDS. Providers:

(i) are at least 18 years of age;

(ii) complete the ~~OKDHS DDSD~~DHS DDS sanctioned training curriculum;

(iii) have not been convicted of, pled guilty to, or pled nolo contendere to misdemeanor assault and battery, or a felony per 56 O.S. §1025.2, unless a waiver is granted per 56 O.S. §1025.2;

(iv) receive supervision and oversight by a person with a minimum of four years of any combination of college level education or full-time equivalent experience in serving persons with disabilities; and

(v) receive oversight regarding specific methods to be used with the member to meet the member's complex behavioral or health support needs.

(B) **Description of services.**

(i) IPS:

(I) are support services provided to members who need an enhanced level of direct support in order to successfully reside in a community-based setting; and

(II) build upon the level of support provided by a HTS or daily living supports (DLS) staff by utilizing a second staff person on duty to provide assistance and training in self-care, daily living, recreational, and habilitation activities.

(ii) The member's IP must clearly specify the role of HTS and the person providing IPS to ensure there is no duplication of services.

(iii) ~~DDSD~~DDS case management supervisor review and approval is required.

(C) **Coverage limitations.** IPS are limited to 24 hours per day and must be included in the member's IP per OAC 317:40-5-151 and 317:40-5-153.

(15) **Adult day services.**

(A) **Minimum qualifications.** Adult day services provider agencies must:

(i) meet the licensing requirements ~~set forth in~~per 63 O.S.§§1-873 *et seq*. and comply with OAC 310:605; and

(ii) be approved by the ~~OKDHS DDSD~~DHS DDS and have a valid OHCA contract for adult day services.

(B) **Description of services.** Adult day services provide assistance with the retention or improvement of self-help, adaptive, and socialization skills, including the opportunity to interact with peers in order to promote a maximum level of independence and function. Services are provided in a non-residential setting separate from the home or facility where the member resides.

(C) **Coverage limitations.** Adult day services are typically furnished four or more hours per day on a regularly scheduled basis, for one or more days per week. A unit is 15 minutes for up to a maximum of six hours daily, at which point a unit is one day. All services must be authorized in the member's IP.

[OAR Docket #15-525; filed 6-12-15]

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

[OAR Docket #15-495]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 5. Individual Providers and Specialties
Part 62. Private Duty Nursing
317:30-5-559 [AMENDED]
317:30-5-560 [AMENDED]
317:30-5-560.1 [AMENDED]
(Reference APA WF # 14-27)

AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 440.80

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INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
Private Duty Nursing (PDN) rules are revised to reflect an OHCA physician will be responsible for utilizing the acuity grid to help make a determination for medical necessity. The Care Management nurses' responsibility will be to gather, summarize, and present the individual cases to the physician.

CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 62. PRIVATE DUTY NURSING

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

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

(1) create a treatment plan for the patient as expressed in OAC 317:30-5-560;

(2) submit the prior authorization request with the appropriate OHCA required forms, the treatment plan, and request the telephonic interview and/or personal visit by an OHCA Care Management Nurse; and

(3) have an OHCA ~~Care Management Nurse~~physician determine medical necessity of the service ~~by~~including

scoring the member's needs on the Private Duty Nursing Acuity Grid.

317:30-5-560. Treatment Plan

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

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

(1) diagnosis;

(2) prognosis;

(3) anticipated length of treatment;

(4) number of hours of private duty nursing requested per day;

(5) assessment needs and frequency (e.g., vital signs, glucose checks, neuro checks, respiratory);

(6) medication method of administration and frequency;

(7) age-appropriate feeding requirements (diet, method and frequency);

(8) respiratory needs;

(9) mobility requirements including need for turning and positioning, and the potential for skin breakdown;

(10) developmental deficits;

(11) casting, orthotics, therapies;

(12) age-appropriate elimination needs;

(13) seizure activity and precautions;

(14) age-appropriate sleep patterns;

(15) disorientation and/or combative issues;

(16) age-appropriate wound care and/or personal care;

(17) communication issues;

(18) social support needs;

(19) name, skill level, and availability of all caregivers; and

(20) other pertinent nursing needs such as dialysis, isolation.

317:30-5-560.1. Prior authorization requirements

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

(b) Authorizations require:

(1) a treatment plan for the member; ~~and~~

(2) a telephonic interview and/or personal visit by an OHCA Care Management Nurse ~~to determine medical necessity using the Private Duty Nursing Acuity Grid.~~; and

(3) an OHCA physician to determine medical necessity including use of the Private Duty Nursing Acuity Grid.

(c) The number of hours authorized may differ from the hours requested on the treatment plan based on the ~~assessment of the Care Management Nurse~~review by an OHCA physician.

(d) If the member's condition necessitates a change in the treatment plan, the provider must request a new prior authorization.

(e) Changes in the treatment plan may necessitate another telephonic interview and/or personal visit by the OHCA Care Management staff.

[OAR Docket #15-495; filed 6-12-15]

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

[OAR Docket #15-493]

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Subchapter 5. Individual Providers and Specialties
Part 64. Clinic Services
317:30-5-579 [NEW]
(Reference APA WF # 14-24)

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ANALYSIS:
Policy is added to outline special provisions and contracting requirements for providers participating in the 340B Drug Discount Program per federal regulation.

CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 64. CLINIC SERVICES

317:30-5-579. Prescription drugs purchased under the 340B Drug Discount Program provided by Clinics

For 340B Drug Discount Program guidelines refer to section 317:30-5-87.

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

[OAR Docket #15-528]

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RULES:
Subchapter 5. Individual Providers and Specialties
Part 67. Behavioral Health Case Management Services
317:30-5-595. [AMENDED]
317:30-5-596. [AMENDED]
(Reference APA WF # 14-48)
AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; State Plan Amendment 4.19-B, pg. 22
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ANALYSIS:
Policy is revised to add the State Plan authorized billing limits for regular TCM and intensive TCM. Rules are also amended to create a distinction between LBHPs and licensure candidates. Additionally, rules are revised to include CM II certification requirements.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 67. BEHAVIORAL HEALTH CASE MANAGEMENT SERVICES

317:30-5-595. Eligible providers

Services are provided by outpatient behavioral health agencies established for the purpose of providing behavioral health outpatient and case management services.

(1) **Provider agency requirements.** Services are provided by outpatient behavioral health agencies contracted with OHCA that meet the requirements under OAC 317:30-5-240. The agency must demonstrate its capacity to deliver behavioral health case management services in terms of the following items:

(A) OHCA reserves the right to obtain a copy of any accreditation audit and/or site visit reports from the provider and/or the accreditation agency.

(B) Agencies that are eligible to contract with OHCA to provide behavioral health case management services to eligible individuals must be community based.

(C) The agency must be able to demonstrate the ability to develop and maintain appropriate patient records including but not limited to assessments, service plans, and progress notes.

(D) An agency must agree to follow the Oklahoma Department of Mental Health and Substance Abuse Services established behavioral health case management rules found in OAC 450:50.

(E) An agency's behavioral health case management staff must serve the target group on a 24 hour on call basis.

(F) Each site operated by a behavioral health outpatient and case management facility must have a separate provider number, per OAC 317:30-5-240.2.

(2) **Provider Qualifications.** For behavioral health case management services to be compensable by SoonerCare, the provider performing the service must be ~~a~~an LBHP, Licensure Candidate, CADC, or have and maintain a current certification as a Case Manager II (CM II) or Case Manager I (CM I) from the ODMHSAS. The requirements for obtaining these certifications are as follows:

(A) Certified Behavioral Health Case Manager II (CM II) must meet the requirements in (i), (ii) ~~or~~ , (iii) or (iv) below:

(i) Possess a Bachelor's or Master's degree in a behavioral health related field earned from a regionally accredited college or university recognized by the United States Department of Education (USDE) or a Bachelor's or Master's degree in education; and complete web-based training for behavioral health case management and behavioral health rehabilitation as specified by ODMHSAS; and complete one day of face-to-face behavioral health case management training and two days of face-to-face behavioral health rehabilitation training as specified by ODMHSAS; and pass web-based competency exams in behavioral health

case management and behavioral health rehabilitation.

(ii) Possess a current license as a registered nurse in the State of Oklahoma with experience in behavioral health care; complete web-based training for behavioral health case management and behavioral health rehabilitation as specified by ODMHSAS; complete one day of face-to-face behavioral health case management training and two days of face-to-face behavioral health rehabilitation training as specified by ODMHSAS; and pass web-based competency exams for behavioral health case management and behavioral health rehabilitation.

(iii) Possess a Bachelor's or Master's degree in any field earned from a regionally accredited college or university recognized by the USDE and a current certification or Children's Certificate in Psychiatric Rehabilitation from the US Psychiatric Rehabilitation Association (USPRA); complete the behavioral health case management web-based training as specified by ODMHSAS; complete one day of face-to-face behavioral health case management training; and pass web-based competency exams for behavioral health case management. Applicants who have not received a certificate in children's psychiatric rehabilitation from the US Psychiatric Association (USPRA) must also complete the behavioral health rehabilitation web-based training as specified by ODMHSAS.

(iv) Possess a Bachelor's or Master's degree in any field and proof of active progression toward obtaining a clinical licensure Master's or Doctoral degree at a regionally accredited college or university recognized by the USDE~~.~~ and complete web-based training for behavioral health case management and behavioral health rehabilitation as specified by ODMHSAS; complete one day of face-to-face behavioral health case management training and two days of face-to-face behavioral health rehabilitation training as specified by ODMHSAS; and pass web-based competency exams in behavioral health case management and behavioral health rehabilitation.

(B) Certified Behavioral Health Case Manager I meets the requirements in either (i) or (ii), and (iii):

(i) completed 60 college credit hours; or

(ii) has a high school diploma with 36 total months of experience working with persons who have a mental illness and/or substance abuse. Documentation of experience on file with ODMHSAS; and

(iii) Completes two days of ODMHSAS specified behavioral health case management training and passes a web-based competency exam for behavioral health case management.

(C) **Wraparound Facilitator Case Manager.** LBHP, Licensure Candidate, CADC, or meets the qualifications for CM II and has the following:

(i) Successful completion of the ODMHSAS training for wraparound facilitation within six months of employment; and

(ii) Participate in ongoing coaching provided by ODMHSAS and employing agency; and

(iii) Successfully complete wraparound credentialing process within nine months of beginning process; and

(iv) Direct supervision or immediate access and a minimum of one hour weekly clinical consultation with a Qualified Mental Health Professional, as required by ODMHSAS~~;~~.

(D) **Intensive Case Manager.** LBHP, Licensure Candidate, CADC or meets the provider qualifications of a Case Manager II and has the following:

(i) A minimum of two years Behavioral Health Case Management experience, crisis diversion experience, and

(ii) must have attended the ODMHSAS six hours Intensive case management training.

(E) All certified case managers must fulfill the continuing education requirements as outlined under OAC 450:50-5-4.

317:30-5-596. Coverage by category

Payment is made for behavioral health case management services as set forth in this Section.

(1) Payment is made for services rendered to SoonerCare members as follows:

(A) **Description of behavioral health case management services.** Services under behavioral health case management are not comparable in amount, duration and scope. The target group for behavioral health case management services are persons under age 21 who are in imminent risk of out-of-home placement for psychiatric or substance abuse reasons or are in out-of-home placement due to psychiatric or substance abuse reasons and chronically and/or severely mentally ill adults who are institutionalized or are at risk of institutionalization. All behavioral health case management services will be subject to medical necessity criteria.

(i) Behavioral health case management services are provided to assist eligible individuals in gaining access to needed medical, social, educational and other services essential to meeting basic human needs. The behavioral health case manager provides assessment of case management needs, development of a case management care plan, referral, linkage, monitoring and advocacy on behalf of the member to gain access to appropriate community resources. The behavioral health case manager must monitor the progress in gaining access to services and continued appropriate utilization of necessary community resources.

Behavioral case management is designed to promote recovery, maintain community tenure, and to assist individuals in accessing services for themselves following the case management guidelines established by ODMHSAS. In order to be compensable, the service must be performed utilizing the Strengths Based model of case management. This model of case management assists individuals in identifying and securing the range of resources, both environmental and personal, needed to live in a normally interdependent way in the community. The focus for the helping process is on strengths, interests, abilities, knowledge and capacities of each person, not on their diagnosis, weakness or deficits. The relationship between the service member and the behavioral health case manager is characterized by mutuality, collaboration, and partnership. Assistive activities are designed to occur primarily in the community, but may take place in the behavioral health case manager's office, if more appropriate. The community based behavioral health case management agency will coordinate with the member and family (if applicable) by phone or face-to-face, to identify immediate needs for return to home/community no more than 72 hours after notification that the member/family requests case management services. For member's discharging from a higher level of care than outpatient, the higher level of care facility is responsible for scheduling an appointment with a case management agency for transition and post discharge services. The case manager will make contact with the member and family (if applicable) for transition from the higher level of care than outpatient back to the community, within 72 hours of discharge, and then conduct a follow-up appointment/contact within seven days. The case manager will provide linkage/referral to physicians/medication services, counseling services, rehabilitation and/or support services as described in the case management service plan. Case Managers may also provide crisis diversion (unanticipated, unscheduled situation requiring supportive assistance, face-to-face or telephone, to resolve immediate problems before they become overwhelming and severely impair the individual's ability to function or maintain in the community) to assist member(s) from progression to a higher level of care. During the follow-up phase of these referrals or links, the behavioral health case manager will provide aggressive outreach if appointments or contacts are missed within two business days of the missed appointments. Community/home based case management to assess the needs for services will be scheduled as reflected in the case management service plan, but not less than one time per month. The member/parent/guardian has the right to refuse behavioral health case management and cannot be restricted from other services because of a refusal of behavioral health case management services.

(ii) An eligible member/parent/guardian will not be restricted and will have the freedom to choose a behavioral health case management provider as well as providers of other medical care.

(iii) In order to ensure that behavioral health case management services appropriately meet the needs of the member and family and are not duplicated, behavioral health case management activities will be provided in accordance with an individualized plan of care.

(iv) The individual plan of care must include general goals and objectives pertinent to the overall recovery of the member's (and family, if applicable) needs. Progress notes must relate to the individual plan of care and describe the specific activities to be performed. The individual plan of care must be developed with participation by, as well as, reviewed and signed by the member, the parent or guardian (if the member is under 18), the behavioral health case manager, and a Licensed Behavioral Health Professional or Licensure Candidate as defined in OAC ~~317:30-5-240(d).~~317:30-5-240.3(a) and (b).

(v) SoonerCare reimbursable behavioral health case management services include the following:

(I) Gathering necessary psychological, educational, medical, and social information for the purpose of individual plan of care development.

(II) Face-to-face meetings with the member and/or the parent/guardian/family member for the implementation of activities delineated in the individual plan of care.

(III) Face-to-face meetings with treatment or service providers, necessary for the implementation of activities delineated in the individual plan of care.

(IV) Supportive activities such as non face-to-face communication with the member and/or parent/guardian/family member.

(V) Non face-to-face communication with treatment or service providers necessary for the implementation of activities delineated in the individual plan of care.

(VI) Monitoring of the individual plan of care to reassess goals and objectives and assess progress and or barriers to progress.

(VII) Crisis diversion (unanticipated, unscheduled situation requiring supportive assistance, face-to-face or telephone, to resolve immediate problems before they become overwhelming and severely impair the individual's

ability to function or maintain in the community) to assist member(s) from progression to a higher level of care.

(VIII) Transitioning from institutions to the community. Behavioral Health Case Management is available to individuals transitioning from institutions to the community (except individuals ages 22 to 64 who reside in an institution for mental diseases (IMD) or individuals who are inmates of public institutions). Individuals are considered to be transitioning to the community during the last 30 consecutive days of a covered institutional stay. This time is to distinguish case management services that are not within the scope of the institution's discharge planning activities from case management required for transitioning individuals with complex, chronic, medical needs to the community. Transition services provided while the individual is in the institution are to be claimed as delivered on the day of discharge from the institution.

(B) **Levels of Case Management.**

(i) Basic Case Management/Resource Coordination. Resource coordination services are targeted to adults with serious and persistent mental illness and children and adolescents with mental illness or serious emotional disturbance, and their families, who need assistance in accessing, coordination, and monitoring of resources and services. Services are provided to assess an individual's strengths and meet needs in order to achieve stability in the community. Standard managers have ~~with~~ caseloads of 30 - 35 members. Basic case management/resource coordination is limited to 25 units per member per month.

(ii) Intensive Case Management (ICM)/Wraparound Facilitation Case Management (WFCM). Intensive Case Management is targeted to adults with serious and persistent mental illness (including members in PACT programs) and Wraparound Facilitation Case Management is targeted to children with serious mental illness and emotional disorders (including members in a System of Care Network) who are deemed high risk and in need of more intensive CM services. It is designed to ensure access to community agencies, services, and people whose functions are to provide the support, training and assistance required for a stable, safe, and healthy community life, and decreased need for higher levels of care. To produce a high fidelity wraparound process, a facilitator can facilitate between 8 and 10 families. To ensure that these intense needs are met, case manager caseloads are limited between 10-15 caseloads. The ICM shall be a Certified Behavioral Health Case Manager, have a minimum of 2 years Behavioral Health Case Management experience, crisis diversion experience, must have attended the ODMHSAS 6 hours ICM training, and 24 hour availability is required. ICM/WFCM is limited to 54 units per member per month.

(C) **Excluded Services.** SoonerCare reimbursable behavioral health case management does not include the following activities:

(i) Physically escorting or transporting a member or family to scheduled appointments or staying with the member during an appointment; or

(ii) Managing finances; or

(iii) Providing specific services such as shopping or paying bills; or

(iv) Delivering bus tickets, food stamps, money, etc.; or

(v) Counseling, rehabilitative services, psychiatric assessment, or discharge planning; or

(vi) Filling out forms, applications, etc., on behalf of the member when the member is not present; or

(vii) Filling out SoonerCare forms, applications, etc.;

(viii) Mentoring or tutoring;

(ix) Provision of behavioral health case management services to the same family by two separate behavioral health case management agencies;

(x) Non face-to-face time spent preparing the assessment document and the service plan paperwork;

(xi) monitoring financial goals;

(xii) services to nursing home residents;

(xiii) psychotherapeutic or rehabilitative services, psychiatric assessment, or discharge; or

(xix) services to members residing in ICF/IID facilities.

(D) **Excluded Individuals.** The following SoonerCare members are not eligible for behavioral health case management services:

(i) Children/families for whom behavioral health case management services are available through OKDHS/OJA staff without special arrangements with OKDHS, OJA, and OHCA;

(ii) Members receiving Residential Behavior Management Services (RBMS) in a foster care or group home setting unless transitioning into the community;

(iii) Residents of ICF/IID and nursing facilities unless transitioning into the community;

(iv) Members receiving services under a Home and Community Based services (HCBS) waiver program.

(E) Case management services provided to Medicare eligible members should be filed directly with the fiscal agent.

(F) **Documentation requirements.** The service plan must include general goals and objectives pertinent to the overall recovery needs of the member.

Progress notes must relate to the service plan and describe the specific activities performed. Behavioral health case management service plan development is compensable time if the time is spent communicating with the participation by, as well as, reviewed and signed by the member, the behavioral health case manager, and a licensed behavioral health professional or licensure candidate as defined at OAC 317:30-5-240.3(a) and (b). All behavioral health case management services rendered must be reflected by documentation in the records. In addition to a complete behavioral health case management service, plan documentation of each session must include but is not limited to:

(i) date;

(ii) person(s) to whom services are rendered;

(iii) start and stop times for each service;

(iv) original signature or the service provider (original signatures for faxed items must be added to the clinical file within 30 days);

(v) credentials of the service provider;

(vi) specific service plan needs, goals and/or objectives addressed;

(vii) specific activities performed by the behavioral health case manager on behalf of the child related to advocacy, linkage, referral, or monitoring used to address needs, goals and/or objectives;

(viii) progress and barriers made towards goals, and/or objectives;

(ix) member (family when applicable) response to the service;

(x) any new service plan needs, goals, and/or objectives identified during the service; and

(xi) member satisfaction with staff intervention.

(G) **Case Management Travel Time.** The rate for case management services assumes that the case manager will spend some amount of time traveling to the member for the face-to-face service. The case manager must only bill for the actual face-to-face time that they spend with the member and not bill for travel time. This would be considered duplicative billing since the rate assumes the travel component already.

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CHAPTER 30. MEDICAL PROVIDERS-FEE FOR SERVICE

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ANALYSIS:
Rules are revised to remove the requirement for FQHC's to submit the Medicare Certification number in conjunction with the Health Resources and Services Administration (HRSA) grant award letter.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 75. FEDERALLY QUALIFIED HEALTH CENTERS

317:30-5-660.1. Health Center multiple sites contracting

(a) Health Centers may contract as SoonerCare Traditional providers and as a PCP/CM under SoonerCare Choice (Refer to OAC 317:25-7-5).

(b) Health Centers are required to submit a list of all entities affiliated or owned by the Center including any programs that do not have Health Center status, along with all OHCA provider numbers.

(c) Payment for FQHC services is based on a Prospective Payment System (PPS). (Refer to OAC 317:30-5-664.10) In order to be eligible for reimbursement under this method for covered services, in traditional primary care settings, each site must submit an approval copy of the Health Resource and Service Administration (HRSA) Notice of Grant Award Authorization for Public Health Services Funds under Section 330, (or a copy of the letter from CMS designating the facility

as a "Look Alike" FQHC)~~and a copy of the Medicare certification number,~~ at the time of enrollment.

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Subchapter 5. Individual Providers and Specialties
Part 79. Dentists
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317:30-5-698 [AMENDED]
317:30-5-699 [AMENDED]
317:30-5-700 [AMENDED]
317:30-5-700.1 [AMENDED]
(Reference APA WF # 14-25)
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ANALYSIS:
Policy is revised to align practice with the Code on Dental Procedures and Nomenclature (CDT) and to ensure the delivery of dental services meets the standard of care.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 79. DENTISTS

317:30-5-696. Coverage by category

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

(1) **Adults.**

(A) Dental coverage for adults is limited to:

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

(ii) Smoking and Tobacco Use Cessation Counseling; and

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

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

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

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

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

(A) **Comprehensive oral evaluation.** This procedure ~~is~~may be performed for any member every~~not seen by any dentist for more than 12~~36 months. An examination should precede any radiographs, and chart documentation must include radiographic interpretations, caries risk assessment and both medical and dental health history of member. The comprehensive treatment plan should be the final results of this procedure.

(B) **Periodic oral evaluation.** This procedure may be provided for a member of record if not seen

by ~~any~~a dentist for more than six months. An examination should precede any radiographs, and chart documentation must include radiographic interpretations, caries risk assessment and both medical and dental health history of member. The comprehensive treatment plan should be the final results of this procedure.

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

(D) **Radiographs (x-rays).** To be SoonerCare compensable, x-rays must be of diagnostic quality and medically necessary. A clinical examination must precede any radiographs, and chart documentation must include member history, prior radiographs, caries risk assessment and both dental and general health needs of the member. The referring dentist is responsible for providing properly identified x-rays of acceptable quality with a referral, if that provider chooses to expose and submit for reimbursement prior to referral. Periapical radiograph must include at least 3 millimeters beyond the apex of the tooth being x-rayed. Panoramic films and full mouth radiographs (minimum of 12 periapical films and two posterior bitewings) are allowable once in a three year period and must be of diagnostic quality. Individually listed intraoral radiographs by the same dentist/dental office are considered a complete series if the fee for individual radiographs equals or exceeds the fee for a complete series. Panoramic films are only compensable when chart documentation clearly indicates ~~the test is being performed~~reasons for the exposure based on clinical findings. This type of exposure is not to rule out or evaluate ~~non-caries related pathology discovered by prior examination~~caries. Prior authorization and a detailed medical need narrative are required for additional panoramic films taken within three years of the original set.

(E) **Dental sealants.** Tooth numbers 2, 3, 14, 15, 18, 19, 30 and 31 must be caries free on the interproximal and occlusal surfaces to be eligible for this service. This service is available through 18 years of age and is compensable ~~only once per lifetime~~once every 36 months if medical necessity is documented. ~~Replacement of sealants is not a covered service under the SoonerCare program.~~

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

~~(G) **Composite restorations.**~~

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

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

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

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

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

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

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

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

~~(i) posterior primary teeth when:~~

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

~~(II) the teeth have no mobility; or~~

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

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

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

(i) Stainless steel crowns are allowed if:

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

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

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

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

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

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

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

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

(iv) Placement of a stainless steel crown ~~includes all related follow-up service~~is allowed once for a minimum period of ~~two years~~24 months. No other ~~restorative procedure~~restoration on that tooth is compensable during that period of time. A stainless steel crown is not a temporizing treatment to be used while a permanent crown is being fabricated.

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

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

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

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

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

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

(iii) Placement of a stainless steel crown ~~includes all related follow up service~~ excludes placement of any other type of crown for a period of ~~two years~~24 months. No other ~~restorative procedure~~restoration on that tooth is compensable during that period of time. A stainless steel crown is not a temporizing treatment to be used while a permanent crown is being fabricated.

(~~K~~I) **Pulpotomies and pulpectomies.**

(i) Therapeutic pulpotomies and pulpal debridement are allowable ~~for molars and teeth numbers listed below~~once per lifetime. Pre-and post-operative periapical x-rays must be available for review, if requested. Therapeutic pulpotomies and pulpal debridement is available for the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(vi) Composite restorations:~~

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

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

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

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

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

~~(E) Periodontal scaling and root. Procedure is designed for the removal of calculus or tissue that is contaminated and requires anesthesia and some soft tissue removal. This procedure requires that each tooth have 30 or more of the 6 point measurements 5 millimeters or greater, or have multiple areas of radiographic bone loss and subgingival calculus and must~~

~~involve two or more teeth per quadrant for consideration. This procedure is not allowed on members under age 10. This procedure is not allowed in conjunction with any other periodontal surgery.~~

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

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

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

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

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

(b) Requests for prior authorization are filed on the currently approved ADA form. OHCA notifies the provider on the determination of prior authorization using OHCA Prior Authorization Request Decision form. Prior authorized services must be billed exactly as they appear on the prior authorization. Payment is not made for any services provided prior to receiving authorization except for the relief of pain.

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

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

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

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

(i) Permanent teeth only.

(ii) Accepted ADA materials must be used.

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

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

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

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

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

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

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

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

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

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

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

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

(viii) Endodontics will not be considered if:

(I) an opposing tooth has super erupted;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

317:30-5-699. Restorations

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

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

~~(2) sub-gingival margins~~

(~~b~~a) **Utilization parameters.** The Oklahoma Health Care Authority utilization parameters allow only one permanent restorative service to be provided per tooth per ~~18~~24 months. Additional restorations may be authorized upon approval of OHCA in cases of trauma. Teeth receiving a restoration are eligible within three months for consideration of single crown if endodontically treated. Providers must document type of isolation used in treatment progress notes. The provider is

responsible for follow-up or any required replacement of a failed restoration, if the member is currently SoonerCare eligible. Fees paid for the original restorative services may be recouped if any additional treatments are required on the same tooth by a different provider within 12 months due to defective restoration or recurrent decay. If it is determined by the Dental Director that a member has received poorly rendered or insufficient treatment from a provider, the Dental Director may prior authorize corrective procedures by a second provider.

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

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

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

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

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

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

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

(7) An incisal angle restoration is defined as one of the angles formed by the junction of the incisal and the mesial or distal surface of an anterior tooth. If any of these surfaces are restored at the same appointment, even if separate, it is considered as a single incisal angle restoration.

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

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

317:30-5-700. Orthodontic services

(a) In order to be eligible for SoonerCare Orthodontic services, members must be referred through a primary care dentist; a member can receive a referral from a primary care dentist to the orthodontist only after meeting the following:

(1) the member has had a caries free initial visit; or

(2) has all decayed areas restored and has remained caries free for ~~6~~12 months; and

(3) has demonstrated competency in maintaining an appropriate level of oral hygiene.

(b) Member with cleft palate can be referred directly by their treating physician without a dental referral and are exempt from above requirements.

(c) The Oklahoma SoonerCare Orthodontic Program limits orthodontic services to handicapping malocclusions determined to be severe enough to warrant medically necessary treatment. The orthodontic provider has the ability to determine if members may qualify with a visual screening. Diagnostic record accumulation and/or submission should only occur for members with high potential for acceptance. These orthodontic services include the following:

(1) a handicapping malocclusion, as measured on the Handicapping Labio-Lingual Deviation Index (HLD) with a minimum score of 30;

(2) any classification secondary to cleft palate or other maxillofacial deformity;

(3) if a single tooth or anterior crossbite is the only medical need finding, service will be limited to interceptive treatment;

(4) fixed appliances only; and

(5) permanent dentition with the exception of cleft defects.

(d) Reimbursement for Orthodontic services is limited to:

(1) Orthodontists, or

(2) General or Pediatric dental practitioners who have completed at least 200 certified hours of continuing education in the field of orthodontics practice and submit for review at least 25 successfully completed comprehensive cases. Of these 25 comprehensive cases, ten or more must be extraction cases. An applicant for this certification must practice in an OHCA deemed under served area. The comprehensive cases submitted should be of a complexity consistent with type of handicapping Malocclusion likely to be treated in the SoonerCare program.

(A) Cases submitted must include at least one of each of the following types:

(i) deep overbite where multiple teeth are impinging upon the soft tissue of the palate;

(ii) impacted canine or molar requiring surgical exposure;

(iii) bilateral posterior crossbite requiring fixed rapid palatal expansion; and

(iv) skeletal class II or III requiring orthognathic surgery.

(B) As with all dental or orthodontia treatment performed and reimbursed by SoonerCare, all pre and post orthodontic records must be available for review.

(C) The Oklahoma Health Care Authority requires all General dentists providing comprehensive orthodontic care to submit a copy of the Oklahoma Board of Dentistry continuing education report and verification that at least 20 continuing education hours in the field of orthodontics has been completed per reporting period. All verification reports must be submitted to OHCA Dental unit every three years, no

later than August 30. In addition, verification of adequate progress for all active orthodontic cases will be reviewed by the OHCA Dental Unit upon completion of 24 months of therapy.

(e) The following limitations apply to orthodontic services:

(1) Cosmetic orthodontic services are not a covered benefit of the SoonerCare Program and no requests should be submitted;

(2) All orthodontic procedures require prior authorization for payment;

(3) Prior authorization for orthodontic treatment is not a notification of the member's eligibility and does not guarantee payment. Payment for authorized services depends on the member's eligibility at the beginning of each treatment year. Treatment year is determined by date of banding;

(4) The member must be SoonerCare-eligible and under 18 years of age at the time the request for prior authorization for treatment is received by the OHCA. Services cannot be added or approved after eligibility has expired. It is the orthodontist's responsibility to verify that the member has current SoonerCare eligibility and the date of birth indicates the member is under age 18.

(f) Orthodontic services are an elective procedure. The orthodontist must interview the prospective member as to his/her understanding of and willingness to cooperate fully in a lengthy treatment program.

(g) The interview information is unavailable to OHCA except through the provider's recommendation of treatment. The interview process for OHCA members is equivalent to that of private pay patients.

(h) Providers are not obligated to accept a member when it appears that the member will not cooperate in the orthodontic hygiene treatment program, does not return to the general dentist for preventive visits or is not willing to keep eligibility for SoonerCare current.

317:30-5-700.1. Orthodontic prior authorization

(a) The following records and documentation, plainly labeled with the member's full name, recipient identification number (RID), and the orthodontist's name are required for prior authorization of orthodontic services and must be submitted to the Dental Unit of the OHCA when the member has a total score of not less than 30 points or meets other eligibility criteria in paragraph (d).

(1) Completed currently approved ADA dental claim form;

(2) Complete and scored Handicapping Labio-Lingual Deviations
Index with Diagnosis of Angle's classification;

(3) Detailed description of any oral maxillofacial anomaly;

(4) Estimated length of treatment;

(5) Intraoral photographs showing teeth in centric occlusion and/or photographs of trimmed anatomically occluded diagnostic casts. A lingual view of casts may be included to verify impinging overbites;

(6) Cephalometric x-rays with tracing, and panoramic film, with a request for prior authorization of comprehensive orthodontic treatment;

(7) If diagnosed as a surgical case, submit an oral surgeon's written opinion that orthognathic surgery is indicated and the surgeon is willing to provide this service;

(8) Additional pertinent information as determined necessary by the orthodontist or as requested by the OHCA.

(b) All images, x-rays, and required documentation must be submitted in one package. OHCA is not responsible for lost or damaged materials.

(c) All records and documentation submitted in a request for prior authorization for orthodontic treatment are reviewed by the OHCA Orthodontic Consultant for compensability and length of treatment. Any documentation on which a decision is made will not be returned.

(d) Some children not receiving a minimum score of 30 on the Handicapping Labio-Lingual Deviation Index (HLD) may have other conditions to be considered. In the event an orthodontist believes there are other medical, social, or emotional conditions impacting the general health of the child, he/she refers to the conditions listed on the EPSDT exception section found on the HLD. The following guidelines and restrictions apply to other conditions:

(1) Other medical, social, or emotional conditions are limited to those conditions that affect the medical, social or emotional function of the child.

(2) Other medical, social, or emotional conditions are not scored if the sole condition sought to be improved is the cosmetic appearance of the child.

(3) Such other medical, social, or emotional conditions must be demonstrated by objective evidence such as supported documentation outside the child's immediate family (i.e., a child's teacher, primary care physician, behavioral health provider, school counselor).

(4) Objective evidence must be submitted with the HLD.

(5) When such other medical, social, or emotional conditions are reflected on the HLD, the OHCA Orthodontic Consultant must review the data and use his or her professional judgment to score the value of the conditions.

(6) The OHCA Orthodontic Consultant may consult with and utilize the opinion of the orthodontist who completes the form.

(e) If it is determined that the malocclusion is not severe enough to warrant medically necessary orthodontic services or the member's age precludes approval, a computer generated notice is issued to the provider and member with notice of the denial, the reason for the denial, and appeal rights (see OAC 317:2-1 for grievance procedures and process).

(f) Orthodontic treatment and payment for the services are approved within the scope of SoonerCare. If orthodontic treatment is approved, a computer generated notice is issued authorizing the first year of treatment.

(1) Approval of orthodontic treatment is given in accordance with the following:

(A) Authorization for the first year begins on the date of banding and includes the placement of appliances, arch wires, and a minimum of six adjustments. It is expected that orthodontic members be seen every four to eight weeks for the duration of active treatment.

(B) Subsequent adjustments will be authorized in one year intervals and the treating orthodontist must provide a comprehensive progress report at the 24 month interval.

(C) All approved treatment is included on the original prior authorization and will include the total payment for that treatment year.

(2) Claim and payment are made as follows:

(A) Payment for comprehensive treatment includes the banding, wires, and adjustments as well as all ancillary services, including the removal of appliances, and the construction and placing of retainers.

(B) Payment is not made for comprehensive treatment beyond 36 months.

(g) If the member moves from the geographic area or shows a need to change their provider, then the provider who received the yearly payment is financially responsible until completion of that member's orthodontic treatment for the current year.

(h) If the provider who received yearly payment does not agree to be financially responsible, then the Oklahoma Health Care Authority will recoup funds paid for the member's orthodontic treatment.

(i) All orthodontic services are subject to post-utilization review. This review may include a request by the OHCA to submit medical documentation necessary to complete the review. After review is completed, these materials are returned to the orthodontist.

(j) Study models must be diagnostic and meet the following requirements:

(1) Study models must be properly poured and adequately trimmed without large voids or positive bubbles present.

(2) Centric occlusion must be clearly indicated by pencil lines on the study models, making it possible to occlude the teeth on the models in centric occlusion.

(3) 3-D model images are preferred.

(4) Study models not in compliance with the above described diagnostic guidelines are not accepted. The provider may send new images that meet these requirements. If the provider does not respond, the request for treatment is denied.

(5) All measurements are made or judged on the basis of greater than or more than the minimal criteria. Measurement, counting, recording, or consideration is performed only on teeth that have erupted and may be seen on the study models.

[OAR Docket #15-516; filed 6-12-15]

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

[OAR Docket #15-521]

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RULES:
Subchapter 5. Individual Providers and Specialties
Part 83. Residential Behavior Management Services in Foster Care Settings
317:30-5-742.2 [AMENDED]
(Reference APA WF # 14-39)
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The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Oklahoma State Plan Attachment 4.19-B, pg.16.1 & Attachment 4.19-B, pg. 34
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SUPERSEDED EMERGENCY ACTIONS:
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n/a
ANALYSIS:
Policy is revised to indicate a 1.5 hours daily limit on services billed by the Treatment Parent Specialist (TPS) within the Therapeutic Foster Care (TFC) setting. Additionally, rules are revised to make a distinction between LBHPs and Licensure Candidates.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 83. RESIDENTIAL BEHAVIOR MANAGEMENT SERVICES IN FOSTER CARE SETTINGS

317:30-5-742.2. Individual plan of care and prior authorization of services

(a) All outpatient behavioral health services must be prior authorized by the designated agent of the Oklahoma Health Care Authority before the service is rendered by an eligible service provider. Without prior authorization, payment is not authorized.

(b) All outpatient behavioral health services in a foster care setting are provided as a result of an individual assessment of the members needs and documented in the individual plan of care.

(1) **Assessment.**

(A) **Definition.** Gathering and assessment of historical and current bio-psycho-social information which includes face-to-face contact with the person and/or the person's family or other informants, or group of persons resulting in a written summary report, diagnosis and recommendations. All agencies must assess the medical necessity of each individual to determine the appropriate level of care.

(B) **Qualified professional.** This service is performed by ~~a~~an LBHP or Licensure Candidate.

(C) **Time requirements.** The minimum face-to-face time spent in assessment session(s) with the member and others for a low complexity Behavioral Health Assessment by a Non-Physician is one and one half hours.

(D) **Documentation requirements.** The assessment must include all elements and tools required by the OHCA. In the case of children under the age of 18, it is performed with the direct, active face-to-face participation of the child and parent or guardian. The child's level of participation is based on age, developmental and clinical appropriateness. The assessment must include all related diagnoses from the most recent DSM edition. The assessment must contain but is not limited to the following:

(i) Date, to include month, day and year of the assessment session(s);

(ii) Source of information;

(iii) Member's first name, middle initial and last name;

(iv) Gender;

(v) Birth Date;

(vi) Home address;

(vii) Telephone number;

(viii) Referral source;

(ix) Reason for referral;

(x) Person to be notified in case of emergency;

(xi) Presenting reason for seeking services;

(xii) Start and stop time for each unit billed;

(xiii) Signature of parent or guardian participating in face-to-face assessment. Signature required for members over the age of 14;

(xiv) Bio-Psychosocial information which must include:

(I) Identification of the member's strengths, needs, abilities and preferences;

(II) History of the presenting problem;

(III) Previous psychiatric treatment history, include treatment for psychiatric; substance use; drug and alcohol addiction; and other addictions;

(IV) Health history and current biomedical conditions and complications;

(V) Alcohol, Drug, and/or other addictions history;

(VI) Trauma, abuse, neglect, violence, and/or sexual assault history of self and/or others, including Department of Human Services involvement;

(VII) Family and social history, include MH, SA, Addictions, Trauma/Abuse/Neglect;

(VIII) Educational attainment, difficulties and history;

(IX) Cultural and religious orientation;

(X) Vocational, occupational and military history;

(XI) Sexual history, including HIV, AIDS, and STD at-risk behaviors;

(XII) Marital or significant other relationship history;

(XIII) Recreation and leisure history;

(XIV) Legal or criminal record, including the identification of key contacts, (e.g. attorneys, probation officers, etc.);

(XV) Present living arrangements;

(XVI) Economic resources;

(XVII) Current support system including peer and other recovery supports.

(xv) Mental status and Level of Functioning information, including questions regarding:

(I) Physical presentation, such as general appearance, motor activity, attention and alertness, etc.;

(II) Affective process, such as mood, affect, manner and attitude, etc.;

(III) Cognitive process, such as intellectual ability, social-adaptive behavior, thought processes, thought content, and memory, etc.; and

(IV) All related diagnoses from the most recent addition of the DSM.

(xvi) Pharmaceutical information to include the following for both current and past medications;

(I) Name of medication;

(II) Strength and dosage of medication;

(III) Length of time on the medication; and

(IV) Benefit(s) and side effects of medication.

(xvii) LBHP's interpretation of findings and diagnosis;

(xviii) Signature and credentials of ~~LBHP~~ the qualified practitioner who performed the face-to-face behavioral assessment.

(2) **Individual plan of care requirement.**

(A) A written individual plan of care following a comprehensive evaluation for each member must be formulated by the provider agency staff within 30 days of admission with documented input from the member, legal guardian (OKDHS/OJA) staff, the foster parent (when applicable) and the treatment provider(s). It is acceptable in circumstances where it is necessary to fax a service plan to someone for review and have them fax back their signature; however, the provider must obtain the original signature for the clinical file within 30 days. No stamped or photocopied signatures are allowed. This plan must be revised and updated each 90 days with documented involvement of the legal guardian and resident.

(B) The individual plan of care must be individualized and take into account the member's age, history, diagnosis, assessed functional levels, culture, and the effect of past and current traumatic experiences in the life of the member. It includes the member's documented diagnosis, appropriate goals, and corresponding reasonable and attainable objectives and action steps within the expected time lines. Each member's individual plan of care is to also address the provider agency's plans with regard to the provision of services. Each plan of care must clearly identify the type of services required to meet the child's treatment needs and frequency over a given period of time.

(C) Requests for outpatient behavioral services in a foster care setting will be approved for a maximum of three months.

(D) **Qualified professional.** This service is performed by ~~a~~an LBHP or Licensure Candidate.

(E) **Time requirements.** Individual plan of care updates must be conducted face-to-face and are required every three months during active treatment. Updates can be conducted whenever it is clinically needed as determined by the ~~LBHP~~qualified practitioner and member.

(F) **Documentation requirements.** Comprehensive and integrated service plan content must address the following:

(i) member strengths, needs, abilities, and preferences(SNAP);

(ii) identified presenting challenges, problems, needs and diagnosis;

(iii) specific goals for the member;

(iv) objectives that are specific, attainable, realistic, and time-limited;

(v) each type of service and estimated frequency to be received;

(vi) the practitioner(s) name and credentials that will be providing and responsible for each service;

(vii) any needed referrals for service;

(viii) specific discharge criteria;

(ix) description of the member's involvement in, and responses to, the treatment plan, and his/her signature and date;

(x) updates to goals, objectives, service provider, services, and service frequency, must be documented within the individual plan of care until the review/update is due.

(xi) individual plan of care updates must address the following:

(I) update to the bio-psychosocial assessment, re-evaluation of diagnosis, individual plan of care goals and/ or objectives;

(II) progress, or lack of, on previous individual plan of care goals and/or objectives;

(III) a statement documenting a review of the current individual plan of care and an explanation if no changes are to be made to the individual plan of care and a statement addressing the status of identified problem behaviors that lead to placement must be included;

(IV) change in goals and/or objectives (including target dates) based upon member's progress or identification of new need, challenges and problems;

(V) change in frequency and/or type of services provided;

(VI) change in practitioner(s) who will be responsible for providing services on the plan;

(VII) change in discharge criteria;

(VIII) description of the member's involvement in, and responses to, the treatment plan, and his/her signature and date.

(3) **Description of Services.** Agency services include:

(A) **Individual, family and group therapy.** See OAC 317:30-5-241.2(a), (b), and (c).

(B) **Crisis/behavior management and redirection.** The provider agency must provide crisis/behavior redirection by agency staff as needed 24 hours per day, 7 days per week. The agency must ensure staff availability to respond to the residential foster parents in a crisis to stabilize members' behavior and prevent placement disruption. This service is to be provided to the member by ~~a~~an LBHP.

(C) **Discharge planning.** The provider agency must develop a discharge plan for each member. The discharge plan must be individualized, child-specific and include an after care plan that is appropriate to the member's needs, identifies the member's needs, includes specific recommendations for follow-up care and outlines plans that are in place at the time of discharge. The plan for children in parental custody must include, when appropriate, reunification plans with the parent(s)/legal guardian. The plan for children who remain in the custody of the Oklahoma Department of Human Services or the Office of Juvenile Affairs must be developed in collaboration with the case worker and in place at the time of discharge. The discharge plan is to include at a minimum, recommendations for continued treatment services, educational services, and other appropriate community resources. Discharge planning provides

a transition from foster care placement into a lesser restrictive setting within the community.

(D) **Substance use /chemical dependency use therapy.** Substance use/chemical dependency therapy can be provided if a member is identified by diagnosis or documented social history as having emotional or behavioral problems directly related to substance use and/or chemical dependency. The modalities employed are provided in order to begin, maintain and enhance recovery from alcoholism, problem drinking, addiction or nicotine use and addiction. This service is to be provided to the member by ~~a~~an LBHP _ or Licensure Candidate.

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

(F) **Psychosocial rehabilitation (PSR).**

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

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

(iii) Qualified providers. CM II~~ and~~, LBHP or a Licensure Candidate and LBHP may perform PSR, following development of an individual plan of care curriculum approved by ~~a~~an LBHP or Licensure Candidate. PSR staff must be appropriately and currently trained in a recognized behavioral/ management intervention program such as MANDT or CAPE or trauma informed methodology. The CM II must have immediate access to ~~a~~an~~fully licensed~~ LBHP who can provide clinical oversight of the CM II and collaborate with the CM II in the provision of services. A minimum of one monthly face-to-face consultation with ~~a~~an~~fully licensed~~ LBHP is required.

(iv) Group sizes. The maximum staffing ratio is eight to one for children under the age of eighteen.

(v) Limitations.

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

(II) Eligibility for PSR services. PSR services are intended for children with Serious Emotional Disturbance (SED), and children with other emotional or behavioral disorders. Children under age 6, unless a prior authorization for children ages 4 and 5 has been granted by OHCA or its designated agent based on a finding of medical necessity, are not eligible for PSR services.

(III) Billing limits. PSR services are time-limited services designed to be provided over the briefest and most effective period possible and as adjunct (enhancing) interventions to compliment more intensive behavioral health therapies. Service limits are based on the member's needs according to the CAR or other approved tool, the requested placement based on the level of functioning rating, medical necessity, and best practice. Service limitations are designed to help prevent rehabilitation diminishing return by remaining within reasonable age and developmentally appropriate daily limits.

(vi) Progress Notes. In accordance with OAC 317:30-5-241.1, the behavioral health individual plan of care developed by the LBHP must include the member's strengths, functional assets, weaknesses or liabilities, treatment goals, objectives and methodologies that are specific and time-limited, and defines the services to be performed by the practitioners and others who comprise the treatment team. When PSR services are prescribed,

the plan must address objectives that are specific, attainable, realistic, measurable, and time-limited. The plan must include the appropriate treatment coordination to achieve the maximum reduction of the mental and/or behavioral health disability and to restore the member to their best possible functional level.

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

(II) Specific goal(s) and objectives addressed during the session/group;

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

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

(V) Progress, or barriers made towards goals, objectives;

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

(VII) Signature of the qualified provider; and

(VIII) Credentials of the qualified provider;

(vii) Additional documentation requirements. Documentation of ongoing consultation and/or collaboration with ~~a~~an LBHP or Licensure Candidate related to the provision of PSR services.

(viii) Non-Covered Services. The following services are not considered PSR and are not reimbursable:

(I) room and board;

(II) educational costs;

(III) supported employment; and

(IV) respite.

(G) **Social skills redevelopment.** Goal directed activities for each member to restore, retain and improve the self-help, communication, socialization, and adaptive skills necessary to reside successfully in home and community based settings. These will be daily activities that are age appropriate, culturally sensitive and relevant to the goals of the individual plan of care. These may include self-esteem enhancement, violence alternatives, communication skills or other related skill development. This service is to be provided to the member by the Treatment Parent Specialist (TPS). Services rendered by the TPS are limited to 1.5 hours daily.

[OAR Docket #15-521; filed 6-12-15]

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

[OAR Docket #15-524]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 5. Individual Providers and Specialties
Part 6. Inpatient Psychiatric Hospitals
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n/a

INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
Inpatient psychiatric hospital policy is revised to indicate that non-specialty Psychiatric Residential Treatment Facilities (PRTF) should have a staff to member ratio of 1:6 during routine awake hours and 1:8 during sleeping hours. Additionally, changes are made to clarify that staffing ratios should always be present for each individual unit not by facility or program. Other minor grammatical changes were made to the rule.

CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 6. INPATIENT PSYCHIATRIC HOSPITALS

317:30-5-95.24. Prior Authorization of inpatient psychiatric services for children

(a) All inpatient psychiatric services for members under 21 years of age must be prior authorized by the OHCA or its designated agent. All inpatient acute and residential psychiatric services will be prior authorized for an approved length of stay. Additional information will be required for a SoonerCare compensable approval on enhanced treatment units or in special population programs. ~~Residential treatment at this level is a longer term treatment that requires a higher staff to member ratio because it is constant, intense, and immediate reinforcement of new behaviors to develop an understanding~~

~~of the behaviors. The environment of specialized residential treatment centers requires special structure and configuration (e.g., sensory centers for autistic members) and specialized training for the staff in the area of the identified specialty. The physician will see the child at least one time a week. A PRTF will not be considered a specialty treatment program for SoonerCare without prior approval of the OHCA behavioral health unit. A treatment program that has been approved as a specialized treatment program must maintain medical records that document the degree and intensity of the psychiatric care delivered to the children.~~

(b) Staffing ratios shall always be present for each individual unit not by facility or program. Patients shall be grouped for accommodation by gender, age, and treatment needs. At a minimum, children, adolescent, and adult treatment programs shall be separate with distinct units for each population. A unit is determined by separate and distinct sleeping, living, and treatment areas often separated by walls and/or doors. Each individual unit shall have assigned staff to allow for appropriate and safe monitoring of patients and to provide active treatment.

(c) Regular residential treatment programs require a staffing ratio of 1:6 during routine waking hours and 1:8 during time residents are asleep with 24 hour nursing care supervised by an RN for management of behaviors and medical complications.

(d) Specialty residential treatment at this level is a longer term treatment that requires a higher staff to member ratio because of the need for constant, intense, and immediate reinforcement of new behaviors to develop an understanding of the behaviors. The environment of specialized residential treatment centers requires special structure and configuration (e.g., sensory centers for autistic members) and specialized training for the staff in the area of the identified specialty. The physician will see the child at least one time a week.

(e) A PRTF will not be considered a specialty treatment program for SoonerCare without prior approval of the OHCA behavioral health unit.

(f) A treatment program that has been approved as a specialized treatment program must maintain medical records that document the degree and intensity of the psychiatric care delivered to the children.

(~~b~~g) Criteria for classification as a specialized PRTF will require a staffing ratio of 1:3 at a minimum during ~~awake~~routine waking hours and 1:6 during time residents are asleep with 24 hour nursing care supervised by a RN for management of behaviors and medical complications. The PRTF will be a secure unit, due to the complexity of needs and safety considerations. Admissions will be restricted to children that meet the medical necessity criteria for RTC and also meet at least two or more of the following:

(1) Have failed at other levels of care or have not been accepted at other levels of care;

(2) Behavioral, emotional, and cognitive problems requiring secure residential treatment that includes 1:1, 1:2, or 1:3 staffing due to the member being a danger to themselves and others, for impairments in socialization problems, communication problems, and restricted, repetitive and stereotyped behaviors. These symptoms are severe and intrusive enough that management and treatment in a less restrictive environment places the child and others in danger but, do not meet acute medical necessity criteria. These symptoms which are exhibited across multiple environments must include at least two or more of the following:

(A) Marked impairments in the use of multiple nonverbal behaviors such as eye-to-eye gaze, facial expression, body postures, and gestures to regulate social interaction;

(B) Inability to regulate impulse control with frequent displays of aggression or other dangerous behavior toward self and/or others regularly;

(C) Failure to develop peer relationships appropriate to developmental level;

(D) Lack of spontaneously seeking to share enjoyment, interests, or achievements with other people;

(E) Lack of social or emotional reciprocity;

(F) Lack of attachment to caretakers;

(G) Require a higher level of assistance with activities of daily living requiring multiple verbal cues 50 percent of the time to complete tasks;

(H) Delay, or total lack of, the development of spoken language which is not accompanied by an attempt to compensate through alternative modes of communication such as gesture or mime;

(I) Marked impairment in individuals with adequate speech in the ability to initiate or sustain a conversation with others;

(J) Stereotyped and repetitive use of language or idiosyncratic language;

(K) Lack of varied, spontaneous make-believe play or social imitative play appropriate to developmental level;

(L) Encompassing preoccupation with one or more stereotyped and restricted pattern and interest that is abnormal in intensity of focus;

(M) Inflexible adherence to specific, nonfunctional routines or rituals;

(N) Stereotyped and repetitive motor mannerisms (e.g., hand or finger flapping or twisting or complex whole body movements);

(O) Persistent occupation with parts of objects;

(3) Member is medically stable, but has co-morbid medical conditions which require specialized medical care during treatment;

(4) Full scale IQ below 40 (profound mental retardation intellectual disability).

(~~c~~h) Non-authorized inpatient psychiatric services will not be SoonerCare compensable.

(~~d~~i) The designated agent will prior authorize all services for an approved length of stay based on the medical necessity criteria described in OAC 317:30-5-95.25 through 317:30-5-95.31.

(~~e~~j) Out of state placements must be approved by the agent designated by the OHCA and subsequently approved by the OHCA, Medical Services Behavioral Health Division. Requests for admission to Psychiatric Residential Treatment

Facilities or acute care units will be reviewed for consideration of level of care, availability, suitability, and proximity of suitable services. A prime consideration for placements will be proximity to the family or guardian in order to involve the family or guardian in Active Treatment, including discharge and reintegration planning. Out of state facilities are responsible for insuring appropriate medical care as needed under SoonerCare provisions as part of the per-diem rate. ~~Out of state facilities are responsible for ensuring appropriate medical care as needed under SoonerCare provisions as part of the per-diem rate.~~

(~~f~~k) Inpatient psychiatric services in all acute hospitals and psychiatric residential treatment facilities are limited to the approved length of stay. OHCA, or its designated agent, will approve lengths of stay using the current OHCA Behavioral Health medical necessity criteria as described in OAC 317:30-5-95.25 through OAC 317:30-5-95.31. The approved length of stay applies to both hospital and physician services. The Child and Adolescent Level of Care Utilization System (CALOCUS®) is a level of care assessment that will be used as a tool to determine the most appropriate level of care treatment for a member by LBHPs in the community.

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CHAPTER 30. MEDICAL PROVIDERS-FEE FOR SERVICE

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EFFECTIVE:
August 27, 2015
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Policy is revised to indicate that when the History and Physical (H&P) or a combined H&P and psychiatric evaluation are completed by an allopathic or osteopathic physician with a current license and a board certification/eligible in psychiatry, the assessment(s) may count as the first visit by the physician in active treatment. Additionally, rules are revised to include a distinction between LBHPs and Licensure Candidates.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 6. INPATIENT PSYCHIATRIC HOSPITALS

317:30-5-95.34. Active treatment for children

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

(1) **"Discharge/Transition Planning"** means a patient-centered, interdisciplinary process that begins with an initial assessment of the patient's potential needs at the time of admission and continues throughout the patient's stay. Active collaboration with the patient, family and all involved outpatient practitioners and agencies should be ongoing throughout treatment so that effective connections remain intact. Needed services may consist of the Wraparound process through Systems of Care, counseling, case management and other supports in their community. The linkages with these supports should be made prior to discharge to allow for a smooth transition.

(2) **"Expressive group therapy"** means art, music, dance, movement, poetry, drama, psychodrama, structured therapeutic physical activities, experiential (ROPES), recreational, or occupational therapies that encourage the member to express themselves emotionally and psychologically.

(3) **"Family therapy"** means interaction between ~~a~~an LBHP or licensure candidate, member and family member(s) to facilitate emotional, psychological or behavioral changes and promote successful communication and understanding.

(4) **"Group rehabilitative treatment"** means behavioral health remedial services, as specified in the individual care plan which are necessary for the treatment of the existing primary behavioral health disorders and/or any secondary alcohol and other drug (AOD) disorders in order to increase the skills necessary to perform activities of daily living.

(5) **"Individual rehabilitative treatment"** means a face to face, one on one interaction which is performed

to assist members who are experiencing significant functional impairment due to the existing primary behavioral health disorder and/or any secondary AOD disorder in order to increase the skills necessary to perform activities of daily living.

(6) **"Individual therapy"** means a method of treating existing primary behavioral health disorders and/or any secondary AOD disorders using face to face, one on one interaction between ~~a~~an LBHP or Licensure Candidate and a member to promote emotional or psychological change to alleviate disorders.

(7) **"Process group therapy"** means a method of treating existing primary behavioral health disorders and/or secondary AOD disorders using the interaction between ~~a~~an LBHP or licensure candidate as defined in OAC 317:30-5-240.3, and two or more members to promote positive emotional and/or behavioral change.

(b) Inpatient psychiatric programs must provide "Active Treatment". Active Treatment involves the member and their family or guardian from the time of an admission throughout the treatment and discharge process. Families and/or guardians must be notified of the dates and times of treatment team meetings and be welcomed to attend. Family members must attend family therapy weekly for continued SoonerCare reimbursement. Reasons for exceptions to this requirement must be well documented in the member's treatment plan. For individuals in the age range of 18 up to 21, it is understood that family members and guardians will not always be involved in the member's treatment. Active Treatment also includes an ongoing program of assessment, diagnosis, intervention, evaluation of care and treatment, and planning for discharge and aftercare under the direction of a physician. Evidence based practices such as trauma informed methodology should be utilized to minimize the use of seclusion and restraint.

(c) For individuals age 18 up to 21, the Active Treatment program must be appropriate to the needs of the member and be directed toward restoring and maintaining optimal levels of physical and psychiatric-social functioning. The services and individual plan of care must be recovery focused, trauma informed, specific to culture, age and gender, and provided face-to-face. Services, including type and frequency, will be specified in the Individual Plan of Care.

(d) For individuals under age 18, the components of Active Treatment consist of face-to-face integrated therapies that are provided on a regular basis and will remain consistent with the member's ongoing need for care. The services and individual plan of care must be recovery focused, trauma informed, and specific to culture, age, and gender. Individuals in acute care must receive seventeen (17) hours of documented active treatment services each week, with seven (7) of those hours being dedicated to core services as described in (1) below. Individuals in PRTFs must receive fourteen (14) hours of documented active treatment services each week, with four and a half (4.5) of those hours being dedicated to core services as described in (1) below. Individuals in Community Based Transitional (CBT) must receive ten (10) hours of documented active treatment services each week, with 4 of those hours being dedicated to core services as described in (1) below. The remainder of the active treatment services may include any or all of the elective services listed in (2) below or additional hours of any of the core services. Sixty minutes is the expectation to equal one hour of treatment. When appropriate to meet the needs of the child, the 60 minute timeframe may be split into sessions of no less than 15 minutes each on the condition that the Active Treatment requirements are fully met by the end of the treatment week. The following components meet the minimum standards required for Active Treatment, although an individual child's needs for treatment may exceed this minimum standard:

(1) **Core Services.**

(A) **Individual treatment provided by the physician.** Individual treatment provided by the physician is required three times per week for acute care and one time a week in Residential Treatment Facilities. Individual treatment provided by the physician will never exceed ten calendar days between sessions in PRTFs, never exceed seven calendar days in a specialty PRTF and never exceed 30 calendar days in CBTs. Individual treatment provided by the physician may consist of therapy or medication management intervention for acute and residential programs.

(B) **Individual therapy.** LBHPs or licensure candidates performing this service must use and document an approach to treatment such as cognitive behavioral treatment, narrative therapy, solution focused brief therapy or another widely accepted theoretical framework for treatment. Ongoing assessment of the member's status and response to treatment as well as psycho-educational intervention are appropriate components of individual therapy. Individual therapy must be provided in a confidential setting. The therapy must be goal directed utilizing techniques appropriate to the individual member's plan of care and the member's developmental and cognitive abilities. Individual therapy must be provided two hours per week in acute care and one hour per week in residential treatment by ~~a~~an LBHP or licensure candidate as described in OAC 317:30-5-240.3. One hour of family therapy may be substituted for one hour of individual therapy at the treatment team's discretion.

(C) **Family therapy.** The focus of family therapy must be directly related to the goals and objectives on the individual member's plan of care. Family therapy must be provided one hour per week for acute care and residential. One hour of individual therapy addressing relevant family issues may be substituted for a family session in an instance in which the family is unable to attend a scheduled session by ~~a~~an LBHP or licensure candidate as described in OAC 317:30-5-240.3.

(D) **Process group therapy.** The focus of process group therapy must be directly related to goals and objectives on the individual member's plan of care. The individual member's behavior and the focus of the group must be included in each member's medical record. This service does not include social skills

development or daily living skills activities and must take place in an appropriate confidential setting, limited to the therapist, appropriate hospital staff, and group members. Group therapy must be provided three hours per week in acute care and two hours per week in residential treatment by ~~a~~an LBHP or licensure candidate as defined in OAC 317:30-5-240.3. In lieu of one hour of process group therapy, one hour of expressive group therapy provided by ~~a~~an LBHP ~~or~~, licensure candidate, or Licensed Therapeutic Recreation Specialist may be substituted.

(E) **Transition/Discharge Planning.** Transition/discharge planning must be provided one hour per week in acute care and thirty minutes per week in residential and CBT. Transition/Discharge planning can be provided by any level of inpatient staff.

(2) **Elective services.**

(A) **Expressive group therapy.** Through active expression, inner-strengths are discovered that can help the member deal with past experiences and cope with present life situations in more beneficial ways. The focus of the group must be directly related to goals and objectives on the individual member's plan of care. Documentation must include how the member is processing emotions/feelings. Expressive therapy must be a planned therapeutic activity, facilitated by staff with a relevant Bachelor's degree and/or staff with relevant training, experience, or certification to facilitate the therapy.

(B) **Group rehabilitative treatment.** Examples of educational and supportive services, which may be covered under the definition of group rehabilitative treatment services, are basic living skills, social skills (re)development, interdependent living, self-care, lifestyle changes and recovery principles. Each service provided under group rehabilitative treatment services must have goals and objectives, directly related to the individual plan of care.

(C) **Individual rehabilitative treatment.** Services will be for the reduction of psychiatric and behavioral impairment and the restoration of functioning consistent with the requirements of independent living and enhanced self-sufficiency. This service includes educational and supportive services regarding independent living, self-care, social skills (re)development, lifestyle changes and recovery principles and practices. Each individual rehabilitative treatment service provided must have goals and objectives directly related to the individualized plan of care and the member's diagnosis.

(D) **Recreation therapy.** Services will be provided to reduce psychiatric and behavioral impairment as well as to restore, remediate and rehabilitate an individual's level of functioning and independence in life activities. Services will also be provided in such a way as to promote health and wellness as well as reduce or eliminate the activity limitations and restrictions to participation in life situations caused by an illness or disabling condition. Recreational therapy can be provided in an individual or group setting. If the only activities prescribed for the individual are primarily diversional in nature, (i.e. to provide some social or recreational outlet for the individual), it will not be regarded as active treatment. If provided, recreational therapy must be a planned therapeutic activity, facilitated by a Licensed Therapeutic Recreation Specialist.

(E) **Occupational therapy.** Services will be provided to address developmental and/or functional needs related to the performance of self-help skills, adaptive behavioral, and/or sensory, motor and postural development. Services include therapeutic goal-directing activities and/or exercises used to improve mobility and activities of daily living (ADL) functions when such functions have been impaired due to illness or injury. Services must be provided by an occupational therapist appropriately licensed in the state in which they practice.

(F) **Wellness resource skills development.** Services include providing direction and coordinating support activities that promote good physical health. The focus of these activities should include areas such as nutrition, exercise, support with averting or managing physical health concerns like heart disease, diabetes, and cholesterol, and support regarding the effects of medications have on physical health. Services can include support groups, exercise groups, and individual physical wellness plan development, implementation assistance and support.

(3) **Modifications to active treatment.** When a member is too physically ill or their acuity level precludes them from active behavioral health treatment, documentation must demonstrate that alternative clinically appropriate services were provided.

(e) The expectation is that active treatment will occur regularly throughout the treatment week. A treatment week in Acute is based on the number of days of acute service, beginning the day of admission (day 1). Required active treatment components will be based upon the length of stay as described below. A treatment week in RTC, PRTF and CBT is considered to be a calendar week (i.e. Sunday through Saturday). When a child is admitted to RTC, PRTF or CBT level of care on a day other than Sunday, or discharges on a day other than Saturday, the week will be considered a partial week and services will be required as described below. Active treatment components do not include assessments/evaluations. Active treatment begins the day of admission. Days noted are calendar days.

(1) **Individual treatment provided by the physician.**

(A) In acute, by day two, 1 visit is required. By day 4, 2 visits are required. By day 7, 3 visits are required.

(B) In RTC, PRTF or CBT, one visit during admission week is required. In RTCs, 1 visit during the admission week is required, then once a week thereafter. In PRTFs, one visit during the admission week is required, then once a week thereafter. In CBT, 1 visit is required within 7 days of admission.

Individual treatment provided by the physician will never exceed 10 days between sessions in PRTFs, never exceed 7 days in a specialty PRTF and never exceed 30 days in CBTs. ~~These visits do not include the Psychiatric Evaluation or History and Physical unless personally rendered by the physician.~~The completion of a psychiatric evaluation or a combined psychiatric evaluation and a History and Physical (H&P) evaluation may count as the first visit by the physician if the evaluation was personally rendered by the psychiatrist. If the member is admitted on the last day of the admission week, then the member must be seen by a physician within 24 hours of admission time.

(2) **Individual therapy.**

(A) In acute, by day 3, 30 minutes of treatment are required. By day 5, 1 hour of treatment is required. Beginning on day 7, 2 hours of treatment are required each week. This does not include admission assessments/evaluations or Psychosocial Evaluations unless personally (face to face) rendered by the LBHP or licensure candidate.

(B) In residential treatment (including PRTF and CBT), by day 6, 30 minutes of treatment must be documented. Beginning on day 7, 1 hour of treatment is required each week. This does not include admission assessment/ evaluation or Psychosocial Evaluations unless personally (face to face) rendered by the LBHP or licensure candidate.

(3) **Family therapy.**

(A) In acute, by day 6, 30 minutes of treatment must be documented. Beginning on day 7, 1 hour of treatment is required each week. This does not include admission assessments/evaluation or Psychosocial Evaluations unless personally (face to face) rendered by the LBHP or licensure candidate and the assessments/evaluation or Psychosocial Evaluation has not been used to substitute the initial individual therapy requirement.

(B) In residential treatment (including PRTF and CBT), by day 6, 30 minutes of treatment must be documented. Beginning on day 7, 1 hour of treatment is required each week. This does not include admissions assessment/evaluation or Psychosocial Evaluations unless personally (face to face) rendered by the LBHP or licensure candidate and the assessment/evaluation or Psychosocial Evaluation has not been used to substitute the initial individual therapy requirement.

(f) When an individual is determined to be too ill to participate in treatment, as determined by medical/nursing staff (RN/LPN), documentation must be in the record clearly indicating the reason, limitations, and timeframe for those services to be excused without penalty.

[OAR Docket #15-527; filed 6-12-15]

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

[OAR Docket #15-520]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 6. Inpatient Psychiatric Hospitals
317:30-5-95.4. [AMENDED]
317:30-5-95.14. [AMENDED]
317:30-5-95.33. [AMENDED]
(Reference APA WF # 14-38)
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The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 441.155; 42 CFR 483.440
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SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Inpatient psychiatric hospital policy is revised to clarify that the member's signature on the Individual Plan of Care is required at the time of completion, or before discharge. Rules are also revised to include information regarding the most recent edition of the DSM as it relates to the Individual Plan of Care.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 6. INPATIENT PSYCHIATRIC HOSPITALS

317:30-5-95.4. Individual plan of care for adults ages 21 to 64

(a) Before admission to a psychiatric hospital or immediately after admission, the attending physician or staff physician

must establish a written plan of care for each member age 21 to 64. The plan of care must include:

(1) Diagnoses, symptoms, complaints, and complications indicating the need for admission;

(2) A description of the functional level of the individual;

(3) Objectives;

(4) Any order for medication, treatments, restorative and rehabilitative services, activities, therapies, social services, diet and special procedures recommended for the health and safety of the member;

(5) Plans for continuing care, including review and modification to the plan of care; and

(6) Plans for discharge.

(b) The attending or staff physician and other treatment team personnel involved in the member's care must review each plan of care at least every seven days.

(c) All plans of care and plan of care reviews must be clearly identified as such in the member's medical records. All must be signed and dated by the physician, RN, ~~MHP~~LBHP or licensure candidate, member, and other treatment team members that provide individual, family and group therapy in the required review interval. All plans of care and plan of care reviews must be signed by the member upon completion, except when a member is too physically ill or their acuity level precludes them from signing. If the member has designated an advocate, the advocate's signature is also required on all plans of care and plan of care reviews. If the member was too physically ill or their acuity level precluded them from signing the plan of care and/or the plan of care review at the time of completion, the member must sign the plan when their condition improves but before discharge.

(d) The plan of care must document appropriate member participation in the development and implementation of the treatment plan.

317:30-5-95.14. Individual plan of care for persons over 65 years of age receiving inpatient acute psychiatric services

(a) Before admission to a psychiatric hospital or immediately after admission, the attending physician or staff physician must establish a written plan of care for each applicant or member. The plan of care must include:

(1) Diagnoses, symptoms, complaints, and complications indicating the need for admission;

(2) A description of the functional level of the individual;

(3) Objectives;

(4) Any order for medication, treatments, restorative and rehabilitative services, activities, therapies, social services, diet and special procedures recommended for the health and safety of the member;

(5) Plans for continuing care, including review and modification to the plan of care, and

(6) Plans for discharge.

(b) The attending or staff physician and other treatment team personnel involved in the member's care must review each plan of care at least every seven days.

(c) All plans of care and plan of care reviews must be clearly identified as such in the member's medical records. All must be signed and dated by the physician, RN, ~~MHP~~LBHP or licensure candidate, member and other treatment team members that provide individual, family and group therapy in the required review interval. All plans of care and plan of care reviews must be signed by the member upon completion, except when a member is too physically ill or their acuity level precludes them from signing. If the member has designated an advocate, the advocate's signature is also required on all plans of care and plan of care reviews. If the member was too physically ill or their acuity level precluded them from signing the plan of care and/or the plan of care review at the time of completion, the member must sign the plan when their condition improves but before discharge.

(d) The plan of care must document appropriate member participation in the development and implementation of the treatment plan.

317:30-5-95.33. Individual plan of care for children

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

(1) **"Licensed Behavioral Health Professional (LBHP)"** means licensed psychologists, licensed clinical social workers (LCSW), licensed marital and family therapists (LMFT), licensed professional counselors (LPC), licensed behavioral practitioners (LBP), licensed alcohol and drug counselors (LADC), and advanced practice nurses (APN).

(2) **"Licensure Candidate"** means practitioners actively and regularly receiving board approved supervision, and extended supervision by a fully licensed clinician if board's supervision requirement is met but the individual is not yet licensed, to become licensed by one of the following licensing boards:

(A) Psychology,

(B) Social Work (clinical specialty only),

(C) Professional Counselor,

(D) Marriage and Family Therapist,

(E) Behavioral Practitioner, or

(F) Alcohol and Drug Counselor.

(~~2~~3) **"Individual plan of Care (IPC)"** means a written plan developed for each member within four calendar days of any admission to an acute psychiatric facility or a PRTF and is the document that directs the care and treatment of that member. In Community Based Transitional RTC, the IPC must be completed within 7 days. The individual plan of care must be recovery focused, trauma informed, and specific to culture, age and gender and includes:

(A) ~~the complete record of the DSM-IV-TR five-axis diagnosis, including the corresponding symptoms, complaints, and complications indicating the need for admission;~~A primary diagnosis from the most recent edition of "The Diagnostic and Statistical Manual of Mental Disorders" (DSM) with the exception of V-Codes, adjustment disorders, and substance abuse related disorders, accompanied by a

detailed description of the symptoms supporting the diagnosis. Children 18-20 years of age may have a diagnosis of any personality disorder. Adjustment or substance related disorders may be a secondary diagnosis.

(B) the current functional level of the individual;

(C) treatment goals and measurable time limited objectives;

(D) any orders for psychotropic medications, treatments, restorative and rehabilitative services, activities, therapies, social services, diet and special procedures recommended for the health and safety of the member;

(E) plans for continuing care, including review and modification to the plan of care; and

(F) plan for discharge, all of which is developed to improve the child's condition to the extent that the inpatient care is no longer necessary.

(b) The individual plan of care:

(1) must be based on a diagnostic evaluation that includes examination of the medical, psychological, social, behavioral and developmental aspects of the individual member and reflects the need for inpatient psychiatric care;

(2) must be developed by a team of professionals as specified in OAC 317:30-5-95.35 in collaboration with the member, and his/her parents for members under the age of 18, legal guardians, or others in whose care he/she will be released after discharge;

(3) must establish treatment goals that are general outcome statements and reflective of informed choices of the member served. Additionally, the treatment goal must be appropriate to the member's age, culture, strengths, needs, abilities, preferences and limitations;

(4) must establish measurable and time limited treatment objectives that reflect the expectations of the member served and parent/legal guardian (when applicable) as well as being age, developmentally and culturally appropriate. When modifications are being made to accommodate age, developmental level or a cultural issue, the documentation must be reflected on the individual plan of care. The treatment objectives must be achievable and understandable to the member and the parent/guardian (when applicable). The treatment objectives also must be appropriate to the treatment setting and list the frequency of the service;

(5) must prescribe an integrated program of therapies, activities and experiences designed to meet the objectives;

(6) must include specific discharge and after care plans that are appropriate to the member's needs and effective on the day of discharge. At the time of discharge, after care plans will include referral to medication management, out-patient behavioral health counseling and case management to include the specific appointment date(s), names and addresses of service provider(s) and related community services to ensure continuity of care and reintegration for the member into their family, school, and community;

(7) must be reviewed every five to nine calendar days when in acute care and a regular PRTF, every 11 to 16 calendar days in the OHCA approved longer term treatment programs or specialty PRTF and every 30 days in Community Based Transitional treatment programs by the team specified to determine that services are being appropriately provided and to recommend changes in the individual plan of care as indicated by the member's overall adjustment, progress, symptoms, behavior, and response to treatment;

(8) development and review must satisfy the utilization control requirements for physician re-certification and establishment of periodic reviews of the individual plan of care; and,

(9) each individual plan of care review must be clearly identified as such and be signed and dated individually by the physician, LBHP or licensure candidate, member, parent/guardian (for members under the age of 18), registered nurse, and other required team members. All plans of care and plan of care reviews must be signed by the member upon completion, except when a member is too physically ill or their acuity level precludes them from signing. If the member was too physically ill or their acuity level precluded them from signing the plan of care and/or the plan of care review at the time of completion, the member must sign the plan when their condition improves but before discharge. Individual plans of care and individual plan of care reviews are not valid until completed and appropriately signed and dated. All requirements for the individual plan of care or individual plan of care reviews must be met or a partial per diem recoupment will be merited. If the member's parent/guardian is unable to sign the IPC or IPC review on the date it is completed, then within 72 hours the Provider must in good faith and with due diligence attempt to telephonically notify the parent/guardian of the document's completion and review it with them. Documentation of reasonable efforts to make contact with the member's parent/guardian must be included in the clinical file. In those instances where it is necessary to mail or fax an Individual Plan of Care or Individual Plan of Care review to a parent or OKDHS/OJA worker for review, the parent and/or OKDHS/OJA worker may fax back their signature. The Provider must obtain the original signature for the clinical file within 30 days. Stamped or photocopied signatures are not allowed for any parent or member of the treatment team.

[OAR Docket #15-520; filed 6-12-15]

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

[OAR Docket #15-522]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
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Part 6. Inpatient Psychiatric Hospitals
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n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Policy is revised to reflect that the History and Physical (H&P) should be completed within 24 hours after admission into an inpatient psychiatric hospital. Rules are also amended to clarify that the psychiatric evaluation is performed by a psychiatrist. Further, rules are amended to clarify that the psychiatric evaluation is completed within 60 hours of admission. Rules are amended to clarify recoupment methodology when documentation is not in the member's file. Additionally, rules are amended to reflect a distinction of LBHPs and Licensure Candidates.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 6. INPATIENT PSYCHIATRIC HOSPITALS

317:30-5-95.6. Medical, psychiatric and social evaluations for adults age 21 to 64

The record for an adult member age 21 to 64 must contain complete medical, psychiatric and social evaluations.

(1) The evaluations must be completed as follows:

(A) History and Physical must be completed within ~~48~~24 hours of admission by a licensed independent practitioner [M.D., D.O., Advanced Practice Nurse (A.P.N.), or Physician Assistant (P.A.)].

(B) Psychiatric Evaluation must be completed within ~~48~~60 hours of admission by ~~a M.D. or D.O.~~an allopathic or osteopathic physician with a current license and a board certification/eligible in psychiatry.

(C) Psychosocial Evaluation must be completed within 72 hours of admission by a licensed independent practitioner (M.D., D.O., A.P.N., or P.A.)~~ or a mental health professional~~, a Licensed Behavioral Health Professional, or a Licensure Candidate as defined in OAC 317:30-5-240.3.

(2) The evaluations must be clearly identified as such and must be signed and dated by the evaluator.

317:30-5-95.16. Medical psychiatric and social evaluations for persons over 65 years of age receiving inpatient acute psychiatric services

The record of a member over 65 years of age receiving inpatient acute psychiatric services must contain complete medical, psychiatric and social evaluations.

(1) The evaluations must be completed as follows:

(A) History and Physical must be completed within ~~48~~24 hours of admission by a licensed independent practitioner [M.D., D.O., Advanced Practice Nurse (A.P.N.), or Physician Assistant (P.A.)].

(B) Psychiatric Evaluation must be completed within ~~48~~60 hours of admission by ~~a M.D. or D.O.~~an allopathic or osteopathic physician with a current license and a board certification/eligible in psychiatry.

(C) Psychosocial Evaluation must be completed within 72 hours of admission by a licensed independent practitioner ~~or~~ , a licensed behavioral health professional (LBHP), or Licensure Candidate as defined in OAC: 317:30-5-240.3.

(2) The evaluations must be clearly identified as such and must be signed and dated by the evaluator.

317:30-5-95.37. Medical, psychiatric and social evaluations for inpatient services for children

The member's medical record must contain complete medical, psychiatric and social evaluations.

(1) These evaluations are considered critical documents to the integrity of care and treatment and must be completed as follows:

(A) History and physical evaluation must be completed within ~~48~~24 hours of admission by a licensed independent practitioner (M.D., D.O., A.P.N., or P.A.) and within 7 days in a CBT.

(B) Psychiatric evaluation must be completed within 60 hours of admission by ~~a M.D. or D.O~~an allopathic or osteopathic physician with a current license and a board certification/eligible in psychiatry and within 7 calendar days in a CBT.

(C) Psychosocial evaluation must be completed within 72 hours of an acute admission, within seven calendar days of admission to a PRTF and within 7 calendar days in a CBT by a licensed independent practitioner (M.D., D.O., A.P.N., or P.A.) ~~or~~ , a licensed behavioral health professional (LBHP), or Licensure Candidate as defined in OAC 317:30-5-240.3.

(2) Each of the evaluations must be clearly identified as such and must be signed and dated by the evaluators.

(3) Each of the evaluations must be completed when the member changes levels of care if the existing evaluation is more than 30 calendar days from admission. For continued stays at the same level of care, evaluations remain current for 12 months from the date of admission and must be updated annually within seven calendar days of that anniversary date.

~~(4) The history and physical evaluation, psychiatric evaluation and psychosocial evaluation must be completed within the time lines designated in this section or those days will be rendered non-compensable for SoonerCare until completed.~~

317:30-5-95.42. Service quality review of psychiatric facilities providing services to children

(a) The Service Quality Review conducted by OHCA or its designated agent meets the utilization control requirements as set forth in 42 CFR 456.

(b) There will be an on-site Service Quality Review (SQR) of each in-state psychiatric facility that provides care to SoonerCare eligible children which will be performed by the OHCA or its designated agent. Out-of-state psychiatric facilities that provide care to SoonerCare eligible children will be reviewed according to the procedures outlined in the provider manual. The Oklahoma Health Care Authority will designate the members of the Service Quality Review team.

(c) The SQR team will consist of one to three team members and will be comprised of Licensed Behavioral Health Professionals (LBHP) or Registered Nurses.

(d) The review will include observation and contact with members. The Service Quality Review will consist of members present or listed as facility residents at the beginning of the Service Quality Review visit as well as members on which claims have been filed with OHCA for acute or PRTF levels of care. The review includes validation of certain factors, all of which must be met for the services to be compensable.

(e) Following the on-site inspection, the SQR Team will report its findings to the facility. The facility will be provided with written notification if the findings of the review have resulted in any deficiencies. A copy of the final report will be sent to the facility's accrediting agency.

(f) Deficiencies found during the SQR may result in a partial per-diem recoupment or a full per-diem recoupment of the compensation received. The following documents are considered to be critical to the integrity of care and treatment, must be completed within the time lines designated in OAC 317:30-5-95.37, and cannot be substituted with any other evaluation/assessments not specifically mentioned:

(1) History and physical evaluation;

(2) Psychiatric evaluation;

(3) Psychosocial evaluation; and

(4) Individual Plan of Care.

(g) For each day that the History and Physical evaluation, Psychiatric evaluation, Psychosocial evaluation and/or Individual Plan of Care are not contained within the member's records, those days will warrant a partial per-diem recoupment. ~~The total recoupment, however, will not exceed 10 percent of the total compensation received for the episode of care.~~

(h) If the review findings have resulted in a partial per-diem recoupment of $50.00 per event, the days of service involved will be reported in the notification. If the review findings have resulted in full per-diem recoupment status, the non-compensable days of service will be reported in the notification. In the case of non-compensable days full per diem or partial per diem, the facility will be required to refund the amount.

(i) In the event that CMS recoups from OHCA an amount that exceeds the provider's liability for findings described in this Section, the provider will not be held harmless and will be required to reimburse OHCA the total federal amount identified by CMS and/or its designated audit contractor. ~~(i)~~(j)Penalties of non-compensable days which are the result of the facility's failure to appropriately provide and document the services described herein, or adhere to applicable accreditation, certification, and/or state licensing standards, are not compensable or billable to the member or the member's family.

[OAR Docket #15-522; filed 6-12-15]

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

[OAR Docket #15-535]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 6. Inpatient Psychiatric Hospitals
317:30-5-95.9. [AMENDED]
317:30-5-95.19. [AMENDED]
317:30-5-95.36. [AMENDED]
317:30-5-95.39. [AMENDED]
317:30-5-95.41. [AMENDED]
Part 21. Outpatient Behavioral Health Agency Services
317:30-5-240.2. [AMENDED]
317:30-5-240.3. [AMENDED]
317:30-5-241.4. [AMENDED]
317:30-5-241.5. [AMENDED]
Part 83. Residential Behavior Management Services in Foster Care Settings
317:30-5-740.1. [AMENDED]
317:30-5-741. [AMENDED]
(Reference APA WF # 14-55)
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The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes
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INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Outpatient behavioral health rules are revised to create distinction between licensed behavioral health professionals and licensure candidates. Additionally, other minor grammatical errors were corrected and outdated references were removed.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 6. INPATIENT PSYCHIATRIC HOSPITALS

317:30-5-95.9. Therapeutic services for adults age 21 to 64

An interdisciplinary team of a physician, ~~mental~~licensed behavioral health professional(s) (LBHP), registered nurse, and other staff who provide services to adult members age 21 to 64 in the facility oversee all components of the active treatment and provide services appropriate to their respective discipline. The team developing the individual plan of care must include, at a minimum, the following:

(1) Allopathic or Osteopathic Physician with a current license and a board certification/eligible in psychiatry, or a current resident in psychiatry practicing as described in OAC 317:30-5-2(a)(1)(U); and

(2) ~~a mental health professional~~An LBHP licensed to practice by one of the ~~following~~ boards in (A) through (F):

(A) Psychology (health service specialty only);
(B) Social Work (clinical specialty only);
(C) Licensed Professional Counselor;
(D) Licensed Behavioral Practitioner;
(E) Licensed Marital and Family Therapist;
(F) Licensed Alcohol and Drug Counselor; or
(G) Advanced Practice Nurse (certified in a psychiatric mental health specialty, licensed as a registered nurse with a current certification of recognition from the Board of Nursing in the state in which the services are provided); ~~and~~

(3) Under the supervision of an LBHP, a licensure candidate actively and regularly receiving board approved supervision to become licensed by one of the boards in A through F above, and extended supervision if the board's supervision requirement is met but the individual is not yet licensed, may be a part of the team; and

(~~3~~4) a registered nurse with a minimum of two years of experience in a mental health treatment setting.

317:30-5-95.19. Therapeutic services for persons over 65 years of age receiving inpatient acute psychiatric services

An interdisciplinary team of a physician, licensed behavioral health professional(s) (LBHP)~~LBHPs~~, registered nurse, and other staff who provide services to members over 65 years of age who are receiving inpatient acute psychiatric services in the facility oversee all components of the active treatment and provide services appropriate to their respective discipline. The team developing the individual plan of care must include, at a minimum, the following:

(1) Allopathic or Osteopathic Physician with a current license and a board certification/eligible in psychiatry, or a current resident in psychiatry practicing as described in OAC 317:30-5-2(a)(1)(U); and

(2) ~~a~~an LBHP licensed to practice by one of the ~~following~~ boards in (A) through (F):

(A) Psychology (health service specialty only);
(B) Social Work (clinical specialty only);
(C) Licensed Professional Counselor;
(D) Licensed Behavioral Practitioner;
(E) Licensed Marital and Family Therapist;
(F) Licensed Alcohol and Drug Counselor; or
(G) Advanced Practice Nurse (certified in a psychiatric mental health specialty, licensed as a registered nurse with a current certification of recognition from the Board of Nursing in the state in which the services are provided); ~~and~~

(3) Under the supervision of an LBHP, a licensure candidate actively and regularly receiving board approved supervision to become licensed by one of the boards in A through F above, and extended supervision if the board's supervision requirement is met but the individual is not yet licensed, may be a part of the team; and

(~~3~~4) a registered nurse with a minimum of two years of experience in a mental health treatment setting.

317:30-5-95.36. Treatment team for inpatient children's services

An interdisciplinary team of a physician, ~~mental health professionals,~~licensed behavioral health professionals, registered nurse, member, parent/legal guardian for members under the age of 18, and other personnel who provide services to members in the facility must develop the individual plan of care, oversee all components of the active treatment and provide the services appropriate to their respective discipline.

Based on education and experience, preferably including competence in child psychiatry, the teams must be:

(1) capable of assessing the member's immediate and long range therapeutic needs, developmental priorities and personal strengths and liabilities;

(2) capable of assessing the potential resources of the member's family, and actively involving the family of members under the age of 18 in the ongoing plan of care;

(3) capable of setting treatment objectives;

(4) capable of prescribing therapeutic modalities to achieve the plan objectives;

(5) capable of developing appropriate discharge criteria and plans; and

(6) trained in a recognized behavioral/management intervention program such as MANDT System, Controlling Aggressive Patient Environment (CAPE), SATORI, Professional Assault Crisis Training (PRO-ACT), or a trauma informed methodology with the utmost focus on the minimization of seclusion and restraints.

317:30-5-95.39. Seclusion, restraint, and serious incident reporting requirements for children

(a) Restraint or seclusion may only be used when less restrictive interventions have been determined to be ineffective to protect the member, a staff member or others from harm and may only be imposed to ensure the immediate physical safety of the member, a staff member or others. The use of restraint or seclusion must be in accordance with a written modification to the member's individual plan of care. The type or technique of restraint or seclusion used must be the least restrictive intervention that will be effective to protect the member or others from harm. Restraint or seclusion must be discontinued at the earliest possible time, regardless of the length of time identified in the order. Mechanical restraints will not be used on children under age 18.

(1) Each facility must have policies and procedure to describe the conditions, in which seclusion and restraint would be utilized, the behavioral/management intervention program followed by the facility and the documentation required. Each order by a physician or Licensed Independent Practitioner (LIP) may authorize the RN to continue or terminate the restraint or seclusion based on the member's face to face evaluation. Each order for restraint or seclusion may only be renewed in accordance with the following limits for up to a total of 24 hours:

(A) four hours for children 18 to 20 years of age;

(B) two hours for children and adolescents nine to 17 years of age; or

(C) one hour for children under nine years of age.

(2) The documentation required to ensure that seclusion and restraint was appropriately implemented and monitored will include at a minimum:

(A) documentation of events leading to intervention used to manage the violent or self-destructive behaviors that jeopardize the immediate physical safety of the member or others;

(B) documentation of alternatives or less restrictive interventions attempted;

(C) an order for seclusion/restraint including the name of the LIP, date and time of order;

(D) orders for the use of seclusion/restraint must never be written as a standing order or on an as needed basis;

(E) documentation that the member continually was monitored face to face by an assigned, trained staff member, or continually monitored by trained staff using both video and audio equipment during the seclusion/restraint;

(F) the results of a face to face assessment completed within one hour by a LIP or RN who has been trained in accordance with the requirements specified at OAC 317:30-5-95.35 to include the:

(i) member's immediate situation;

(ii) member's reaction to intervention;

(iii) member's medical and behavioral conditions; and

(iv) need to continue or terminate the restraint or seclusion.

(G) in events the face to face was completed by a trained RN, documentation that the trained RN consulted the attending physician or other LIP responsible for the care of the member as soon as possible after the completion of the one-hour face to face evaluation;

(H) debriefing of the child within 24 hours by ~~a~~an LBHP or licensure candidate;

(I) debriefing of staff within 48 hours; and

(J) notification of the parent/guardian.

(b) Staff must be trained and able to demonstrate competency in the application of restraints, implementation of seclusion, monitoring, assessment, and providing care for a member in restraint or seclusion before performing any of these actions and subsequently on an annual basis. The PRTF must require appropriate staff to have education, training, and demonstrated knowledge based on the specific needs of the member population in at least the following:

(1) techniques to identify staff and member behaviors, events, and environmental factors that may trigger circumstances that require the use of restraint or seclusion;

(2) the use of nonphysical intervention skills;

(3) choosing the least restrictive intervention based on an individualized assessment of the member's medical behavior status or condition;

(4) the safe application and use of all types of restraint or seclusion used in the PRTF, including training in how to recognize and respond to signs of physical and psychological distress;

(5) clinical identification of specific behavioral changes that indicate that restraint or seclusion is no longer necessary;

(6) monitoring the physical and psychological well-being of the member who is restrained or secluded, including but not limited to, respiratory and circulatory status, skin

integrity, vital signs, and any special requirements specified by the policy of the PRTF associated with the one hour face to face evaluation; and

(7) the use of first aid techniques and certification in the use of cardiopulmonary resuscitation, including annual re-certification.

(c) Individuals providing staff training must be qualified as evidence by education, training and experience in techniques used to address members' behaviors. The PRTF must document in staff personnel records that the training and demonstration of competency were successfully completed.

(d) The process by which a facility is required to inform the OHCA of a death, serious injury, or suicide attempt is as follows:

(1) The hospital administrator, executive director, or designee is required to contact the OHCA Behavioral Health Unit by phone no later than 5:00 p.m. on the business day following the incident.

(2) Information regarding the SoonerCare member involved, the basic facts of the incident, and follow-up to date must be reported. The agency will be asked to supply, at a minimum, follow-up information with regard to member outcome, staff debriefing and programmatic changes implemented (if applicable).

(3) Within three days, the OHCA Behavioral Health Unit must receive the above information in writing (example: Facility Critical Incident Report).

(4) Member death must be reported to the OHCA Behavioral Health Services Unit as well as to the Centers for Medicare and Medicaid Regional office in Dallas, Texas.

(5) Compliance with seclusion and restraint reporting requirements will be verified during the onsite inspection of care see OAC 317:30-5-95.42, or using other methodologies.

PART 21. OUTPATIENT BEHAVIORAL HEALTH AGENCY SERVICES

317:30-5-240.2. Provider participation standards

(a) **Accreditation and certification status.** Any agency may participate as an OPBH provider if the agency is qualified to render a covered service and meets the OHCA requirements for provider participation.

(1) Private, Community-based Organizations must be accredited as a provider of outpatient behavioral health services from one of the accrediting bodies and be an incorporated organization governed by a board of directors or be certified by the certifying agency in accordance with Section(s) 3-317, 3-323A, 3-306.1, or 3-415 of Title 43A of the Oklahoma Statutes;

(2) State-operated programs under the direction of ODMHSAS must be accredited by one of the accrediting bodies or be certified by the certifying agency in accordance with Section(s) 3-317, 3-323A, 3-306.1 or 3-415 of Title 43A of the Oklahoma Statues;

(3) Freestanding Psychiatric Hospitals must be licensed and certified by the State Survey Agency as meeting Medicare psychiatric hospital standards and JCAHO accreditation;

(4) General Medical Surgical Hospitals must be appropriately licensed and certified by the State Survey Agency as meeting Medicare standards, including a JCAHO or AOA accreditation;

(5) Federally Qualified Health Centers/Community Health Centers facilities that qualify under OAC 317:30-5-660;

(6) Indian Health Services/Tribal Clinics/Urban Tribal Clinics facilities that qualify under Federal regulation;

(7) Rural Health Clinics facilities that qualify under OAC 317:30-5-355;

(8) Public Health Clinics and County Health Departments;

(9) Public School Systems.

(b) **Certifications.** In addition to the accreditation in paragraph (a) above or ODMHSAS certification in accordance with Section(s) 3-317, 3-323A, 3-306.1 or 3-415 of Title 43A of the Oklahoma Statutes, provider specific credentials are required for the following:

(1) Substance Abuse agencies (OAC 450:18-1-1);

(2) Evidence Based Best Practices but not limited to:

(A) Assertive Community Treatment (OAC 450:55-1-1);

(B) Multi-Systemic Therapy (Office of Juvenile Affairs); and

(C) Peer Support/Community Recovery Support;

(3) Systems of Care (OAC 340:75-16-46);

(4) Mobile and Facility-based Crisis Intervention (OAC 450:23-1-1);

(5) Case Management (OAC 450:50-1-1);

(6) RBMS in group homes (OAC 377:10-7) or therapeutic foster care settings (OAC 340:75-8-4);

(7) Day Treatment - CARF, JCAHO, or COA ~~will be required as of December 31, 2009~~for Day Treatment Services; and

(8) Partial Hospitalization/Intensive Outpatient CARF, JCAHO, or COA ~~will be required as of December 31, 2009~~for Partial Hospitalization services.

(c) **Provider enrollment and contracting.**

(1) Organizations who have JCAHO, CARF, COA or AOA accreditation or ODMHSAS certification in accordance with Section(s) 3-317, 3-323A, 3-306.1 or 3-415 or Title 43A of the Oklahoma Statutes will supply the documentation from the accrediting body or certifying agency, along with other information as required for contracting purposes to the OHCA. The contract must include copies of all required state licenses, accreditation and certifications.

(2) If the contract is approved, a separate provider identification number for each outpatient behavioral health service site will be assigned. Each site operated by an outpatient behavioral health facility must have a separate provider contract and site-specific accreditation and/or certification as applicable. A site is defined as an

office, clinic, or other business setting where outpatient behavioral health services are routinely performed. When services are rendered at the member's residence, a school, or when provided occasionally at an appropriate community based setting, a site is determined according to where the professional staff perform administrative duties and where the member's chart and other records are kept. Failure to obtain and utilize site specific provider numbers will result in disallowance of services.

(3) All behavioral health providers are required to have an individual contract with OHCA in order to receive SoonerCare reimbursement. This requirement includes outpatient behavioral health agencies and all individual rendering providers who work within an agency setting. Individual contracting rendering provider qualification requirements are set forth in OAC 317:30-3-2 and 317:30-5-240.3.

(d) **Standards and criteria.** Eligible organizations must meet each of the following:

(1) Have a well-developed plan for rehabilitation services designed to meet the recovery needs of the individuals served.

(2) Have a multi-disciplinary, professional team. This team must include all of the following:

(A) One of the LBHPs;

(B) A Certified Behavioral Health Case Manager II (CM II) or CADC, if individual or group rehabilitative services for behavioral health disorders are provided, and the designated LBHP(s) or Licensure candidate(s) on the team will not be providing rehabilitative services;

(C) An AODTP, if treatment of substance use disorders is provided;

(D) A registered nurse, advanced practice nurse, or physician assistant, with a current license to practice in the state in which the services are delivered if Medication Training and Support Service is provided;

(E) The member for whom the services will be provided, and parent/guardian for those under 18 years of age.

(F) A member treatment advocate if desired and signed off on by the member.

(3) Demonstrate the ability to provide each of the following outpatient behavioral health treatment services as described in OAC 317:30-5-241 et seq., as applicable to their program. Providers must provide proper referral and linkage to providers of needed services if their agency does not have appropriate services.

(A) Assessments and Service Plans;

(B) Psychotherapies;

(C) Behavioral Health Rehabilitation services;

(D) Crisis Intervention services;

(E) Support Services; and

(F) Day Treatment/Intensive Outpatient.

(4) Be available 24 hours a day, seven days a week, for Crisis Intervention services.

(5) Provide or have a plan for referral to physician and other behavioral health services necessary for the treatment of the behavioral disorders of the population served.

(6) Comply with all applicable Federal and State Regulations.

(7) Have appropriate written policy and procedures regarding confidentiality and protection of information and records, member grievances, member rights and responsibilities, and admission and discharge criteria, which shall be posted publicly and conspicuously.

(8) Demonstrate the ability to keep appropriate records and documentation of services performed.

(9) Maintain and furnish, upon request, a current report of fire and safety inspections of facilities clear of any deficiencies.

(10) Maintain and furnish, upon request, all required staff credentials including certified transcripts documenting required degrees.

317:30-5-240.3. Staff Credentials

(a) **Licensed Behavioral Health Professional (LBHPs).** LBHPs are defined as follows:

(1) Allopathic or Osteopathic Physicians with a current license and board certification in psychiatry or board eligible in the state in which services are provided, or a current resident in psychiatry practicing as described in OAC 317:30-5-2.

(2) Practitioners with a license to practice in the state in which services are provided, issued by one of the licensing boards listed in (A) through (F). The exemptions from licensure under 59 § 1353(4) (Supp. 2000) and (5), 59 § 1903(C) and (D) (Supp. 2000), 59 § 1925.3(B) (Supp. 2000) and (C), and 59 § 1932(C) (Supp. 2000) and (D) do not apply to Outpatient Behavioral Health Services.

(A) Psychology,

(B) Social Work (clinical specialty only),

(C) Professional Counselor,

(D) Marriage and Family Therapist,

(E) Behavioral Practitioner, or

(F) Alcohol and Drug Counselor.

(3) Advanced Practice Nurse (certified in a psychiatric mental health specialty), licensed as a registered nurse with a current certification of recognition from the board of nursing in the state in which services are provided.

(4) A Physician Assistant who is licensed in good standing in this state and has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions.

(~~5~~b) **~~Licensure candidates~~Licensure Candidates.** Licensure candidates are practitioners actively and regularly receiving board approved supervision, and extended supervision by a fully licensed clinician if board's supervision requirement is met but the individual is not yet licensed, to become licensed by one of the licensing boards listed in (2)(A) through (F) above. The supervising ~~licensed professional~~LBHP responsible for the member's care must:

(~~A~~1) staff the member's case with the candidate,

(~~B~~2) be personally available, or ensure the availability of ~~a fully licensed~~ an LBHP to the candidate for consultation while they are providing services,

(~~C~~3) agree with the current plan for the member, and

(~~D~~4) confirm that the service provided by the candidate was appropriate; and

(~~E~~5) The member's medical record must show that the requirements for reimbursement were met and the ~~licensed professional~~LBHP responsible for the member's care has reviewed, countersigned, and dated the service plan and any updates thereto so that it is documented that the licensed professional is responsible for the member's care.

(~~b~~c) **Certified Alcohol and Drug Counselors ~~(CADC's)~~(CADCs).** ~~CADC's~~CADCs are defined as having a current certification as a CADC in the state in which services are provided.

(~~c~~d) **Multi-Systemic Therapy (MST) Provider.** Masters level therapist who ~~work~~works on a team established by OJA which may include Bachelor level staff.

(~~d~~e) **Peer Recovery Support Specialist (PRSS).** The Peer Recovery Support Specialist must be certified by ODMHSAS pursuant to requirements found in OAC 450:53.

(~~e~~f) **Family Support and Training Provider (FSP).** FSPs are defined as follows:

(1) Have a high school diploma or equivalent;

(2) be 21 years of age and have successful experience as a family member of a child or youth with serious emotional disturbance, or a minimum of 2 years experience working with children with serious emotional disturbance or be equivalently qualified by education in the human services field or a combination of work experience and education with one year of education substituting for one year of experience (preference is given to parents or care givers of child with SED);

(3) successful completion of ODMHSAS Family Support Training;

(4) pass background checks; and

(5) service plans must be overseen and approved by ~~a~~an LBHP or Licensure Candidate; and

(6) must function under the general direction of ~~a~~an LBHP, or Licensure Candidate or systems of care team, with ~~a~~an LBHP or Licensure Candidate available at all times to provide back up, support, and/or consultation.

(~~f~~g) **Behavioral Health Aide (BHA).** BHAs are defined as follows:

(1) Behavioral Health Aides must have completed 60 hours or equivalent of college credit; or

(2) may substitute one year of relevant employment and/or responsibility in the care of children with complex emotional needs for up to two years of college experience; and

(3) must have successfully completed the specialized training and education curriculum provided by the ODMHSAS; and

(4) must be supervised by a bachelor's level individual with a minimum of two years case management or care coordination experience; and

(5) service plans must be overseen and approved by ~~a~~an LBHP or Licensure Candidate; and

(6) must function under the general direction of ~~a~~an LBHP, or Licensure Candidate and/or systems of care team, with ~~a~~an LBHP or Licensure Candidate available at all times to provide back up, support, and/or consultation.

317:30-5-241.4. Crisis Intervention

(a) **Onsite and Mobile Crisis Intervention Services (CIS).**

(1) **Definition.** Crisis Intervention Services are face-to-face services for the purpose of responding to acute behavioral or emotional dysfunction as evidenced by psychotic, suicidal, homicidal severe psychiatric distress, and/or danger of AOD relapse. The crisis situation including the symptoms exhibited and the resulting intervention or recommendations must be clearly documented.

(2) **Limitations.** Crisis Intervention Services are not compensable for SoonerCare members who reside in ~~ICF/MR~~ICF/IID facilities, or who receive RBMS in a group home or Therapeutic Foster Home. CIS is also not compensable for members who experience acute behavioral or emotional dysfunction while in attendance for other behavioral health services, unless there is a documented attempt of placement in a higher level of care. The maximum is eight units per month; established mobile crisis response teams can bill a maximum of ~~sixteen units~~four hours per month, and ~~40 units~~ten hours each 12 months per member.

(3) **Qualified professionals.** Services must be provided by ~~a~~an LBHP or Licensure Candidate.

(b) **Facility Based Crisis Stabilization (FBCS).** FBCS services are emergency psychiatric and substance abuse services aimed at resolving crisis situations. The services provided are emergency stabilization, which includes a protected environment, chemotherapy, detoxification, individual and group treatment, and medical assessment.

(1) **Qualified ~~professionals~~practitioners.** FBCS services are provided under the supervision of a physician aided by a licensed nurse, and also include LBHPs and Licensure Candidates for the provision of group and individual treatments. A physician must be available. This service is limited to providers who contract with or are operated by the ODMHSAS to provide this service within the overall behavioral health service delivery system.

(2) **Limitations.** The unit of service is per hour. Providers of this service must meet the requirements delineated in the OAC 450:23. Documentation of records must comply with OAC 317:30-5-248.

317:30-5-241.5. Support services

(a) **Program of Assertive Community Treatment (PACT) Services.**

(1) **Definition.** PACT is provided by an interdisciplinary team that ensures service availability 24 hours a day, seven days a week and is prepared to carry out a full range of treatment functions wherever and whenever needed. An individual is referred to the PACT team service when

it has been determined that his/her needs are so pervasive and/or unpredictable that it is unlikely that they can be met effectively by other combinations of available community services, or in circumstances where other levels of outpatient care have not been successful to sustain stability in the community.

(2) **Target population.** Individuals 18 years of age or older with serious and persistent mental illness and co-occurring disorders. PACT services are those services delivered within an assertive community-based approach to provide treatment, rehabilitation, and essential behavioral health supports on a continuous basis to individuals 18 years of age or older with serious mental illness with a self-contained multi-disciplinary team. The team must use an integrated service approach to merge essential clinical and rehabilitative functions and staff expertise. This level of service is to be provided only for persons most clearly in need of intensive ongoing services.

(3) **Qualified ~~professionals~~practitioners.** Providers of PACT services are specific teams within an established organization and must be operated by or contracted with and certified by the ODMHSAS in accordance with 43A O.S. 319 and OAC 450:55. The team leader must be an LBHP or Licensure Candidate.

(4) **Limitations.** PACT services are billable in 15 minute units. A maximum of 105 hours per member per year in the aggregate is allowed. All PACT compensable SoonerCare services are required to be face-to-face. The following services are separately billable: Case management, facility-based crisis stabilization, physician and medical services.

(5) **Service requirements.** PACT services must include the following:

(A) PACT assessments (initial and comprehensive);

(i) **Initial assessment**- is the initial evaluation of the member based upon available information, including self-reports, reports of family members and other significant parties, and written summaries from other agencies, including police, court, and outpatient and inpatient facilities, where applicable, culminating in a comprehensive initial assessment. Member assessment information for admitted members shall be completed on the day of admission to the PACT. The start and stop times for this service should be recorded in the chart.

(ii) **Comprehensive assessment**- is the organized process of gathering and analyzing current and past information with each member and the family and/or support system and other significant people to evaluate: 1) mental and functional status; 2) effectiveness of past treatment; 3) current treatment, rehabilitation and support needs to achieve individual goals and support recovery; and 4) the range of individual strengths (e.g., knowledge gained from dealing with adversity or personal/professional roles, talents, personal traits) that can act as resources to the member and his/her recovery planning team in pursuing goals. Providers must bill only the face-to-face service time with the member. Non-face to face time is not compensable. The start and stop times for this service should be recorded in the chart.

(B) Behavioral health service plan (moderate and low complexity by a non-physician treatment planning and review) is a process by which the information obtained in the comprehensive assessment, course of treatment, the member, and/or treatment team meetings is evaluated and used to develop a service plan that has individualized goals, objectives, activities and services that will enable a member to improve. The initial assessment serves as a guide until the comprehensive assessment is completed. It is to focus on recovery and must include a discharge plan. It is performed with the direct active participation by the member. SoonerCare compensation for this service includes only the face to face time with the member. The start and stop times for this service should be recorded in the chart.

(C) Treatment team meetings (team conferences with the member present) is a billable service. This service is conducted by the treatment team, which includes the member and all involved practitioners. For a complete description of this service, see OAC 450:55-5-6 Treatment Team Meetings. This service can be billed to SoonerCare only when the member is present and participating in the treatment team meeting. The conference starts at the beginning of the review of an individual member and ends at the conclusion of the review. Time related to record keeping and report generation is not reported. The start and stop times should be recorded in the member's chart. The participating psychiatrist/physician should bill the appropriate CPT code; and the agency is allowed to bill one treatment team meeting per member as medically necessary.

(D) Individual and family psychotherapy;

(E) Individual rehabilitation;

(F) Recovery support services;

(G) Group rehabilitation;

(H) Group psychotherapy;

(I) Crisis Intervention;

(J) Medication training and support services;

(K) Blood draws and /or other lab sample collection services performed by the nurse.

(b) **~~Behavioral Health Aide Services.~~Therapeutic Behavioral Services.**

(1) **Definition.** ~~Behavioral Health Aides provide~~Therapeutic behavioral services include behavior management and redirection and behavioral and life skills remedial training provided by qualified behavioral health aides. The behavioral health aide also provides monitoring and observation of the child's emotional/behavioral status and responses, providing interventions, support and

social skills redirection when needed. Training is generally focused on behavioral, interpersonal, communication, self help, safety and daily living skills.

(2) **Target population.** This service is limited to children with serious emotional disturbance who are in an ODMHSAS contracted systems of care community based treatment program, or are under OKDHS or OJA custody residing within a RBMS level of care, who need intervention and support in their living environment to achieve or maintain stable successful treatment outcomes.

(3) **Qualified ~~professionals~~practitioners.** Behavioral Health Aides must be trained/credentialed through ODMHSAS.

(4) **Limitations.** The Behavioral Health Aide cannot bill for more than one individual during the same time period. Therapeutic behavioral services by a BHA, Treatment Parent Specialist (TPS) or Behavioral Health School Aide (BHSA) cannot be delivered during the same clock time.

(5) **Documentation requirements.** Providers must follow requirements listed in OAC 317:30-5-248.

(c) **Family Support and Training.**

(1) **Definition.** This service provides the training and support necessary to ensure engagement and active participation of the family in the service plan development process and with the ongoing implementation and reinforcement of skills learned throughout the treatment process. Child Training is provided to family members to increase their ability to provide a safe and supportive environment in the home and community for the child. Parent Support ensures the engagement and active participation of the family in the service plan development process and guides families toward taking a proactive role in their child's treatment. Parent Training is assisting the family with the acquisition of the skills and knowledge necessary to facilitate an awareness of their child's needs and the development and enhancement of the family's specific problem-solving skills, coping mechanisms, and strategies for the child's symptom/behavior management.

(2) **Target population.** Family Support and Training is designed to benefit the SoonerCare eligible child experiencing a serious emotional disturbance who is in an ODMHSAS contracted systems of care community based treatment program, are diagnosed with a pervasive developmental disorder, or are under OKDHS or OJA custody, are residing within a RBMS level of care or are at risk for out of home placement, and who without these services would require psychiatric hospitalization.

(3) **Qualified ~~professionals~~practitioners.** Family Support Providers ~~(FSP)~~(FSPs) must be trained/credentialed through ODMHSAS.

(4) **Limitations.** The FSP cannot bill for more than one individual during the same time period.

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

(d) **Peer Recovery Support Services (PRSS).**

(1) **Definition.** Peer recovery support services are an EBP model of care which consists of a qualified peer recovery support specialist provider ~~PRSS~~(PRSS) who assists individuals with their recovery from behavioral health disorders. Recovery Support is a service delivery role in the ODMHSAS public and contracted provider system throughout the behavioral health care system where the provider understands what creates recovery and how to support environments conducive of recovery. The role is not interchangeable with traditional staff members who usually work from the perspective of their training and/or their status as a licensed behavioral health provider; rather, this provider works from the perspective of their experimental expertise and specialized credential training. They lend unique insight into mental illness and what makes recovery possible because they are in recovery.

(2) **Target population.** Children 16 and over with SED and/or substance use disorders and adults 18 and over with SMI and/or substance use disorder(s).

(3) **Qualified professionals.** Peer Recovery Support Specialists ~~PRSS~~(PRSS) must be certified through ODMHSAS pursuant to OAC 450:53.

(4) **Limitations.** The PRSS cannot bill for more than one individual during the same time period. This service can be an individual or group service. Groups have no restriction on size.

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

(6) **Service requirements.**

(A) PRSS staff utilizing their knowledge, skills and abilities will:

(i) teach and mentor the value of every individual's recovery experience;

(ii) model effective coping techniques and self-help strategies;

(iii) assist members in articulating personal goals for recovery; and

(iv) assist members in determining the objectives needed to reach his/her recovery goals.

(B) PRSS staff utilizing ongoing training must:

(i) proactively engage members and possess communication skills/ability to transfer new concepts, ideas, and insight to others;

(ii) facilitate peer support groups;

(iii) assist in setting up and sustaining self-help (mutual support) groups;

(iv) support members in using a Wellness Recovery Action Plan (WRAP);

(v) assist in creating a crisis plan/Psychiatric Advanced Directive;

(vi) utilize and teach problem solving techniques with members;

(vii) teach members how to identify and combat negative self-talk and fears;

(viii) support the vocational choices of members and assist him/her in overcoming job-related anxiety;

(ix) assist in building social skills in the community that will enhance quality of life. Support the development of natural support systems;

(x) assist other staff in identifying program and service environments that are conducive to recovery; and

(xi) attend treatment team and program development meetings to ensure the presence of the member's voice and to promote the use of self-directed recovery tools.

PART 83. RESIDENTIAL BEHAVIOR MANAGEMENT SERVICES

317:30-5-740.1. Provider qualifications and requirements

(a) **Therapeutic foster care model.** Children in the TFC environment receive intensive individualized behavioral health and other support services from qualified staff. Because TFC children require exceptional levels of skill, time and supervision, the number of unrelated children placed per home is limited; no more than two TFC children in a home at any one time unless additional cases are specifically authorized by OKDHS, Division of Children and Family Services or OJA.

(b) **Treatment team.** TFC agencies are primarily responsible for treatment planning and coordination of the child's treatment team. This team is typically composed of an OKDHS or OJA caseworker, the child, the child's parents, others closely involved with the child and family. It also includes the following:

(1) **Certified Behavioral Health Case Manager II (CM).** A bachelors level team member that may provide support services and case management. In addition to the minimum requirements at OAC 317:30-5-240.3 (c), the CM must have:

(A) a minimum of one year of experience in providing direct care and/or treatment to children and/or families, and

(B) have access to weekly consultation with a licensed behavioral health professional or Licensure Candidate.

(C) CM must also follow requirements at OAC 317:30-5-241.3 for providing psychosocial rehabilitation services.

(2) **Licensed Behavioral Health Professional (LBHP).** A masters level professional that provides treatment and supervision for the treatment staff to maintain clinical standards of care and provide direct clinical services. In addition to the requirements at OAC 317:30-5-240.3(a)and (b), the LBHP or Licensure Candidate in a TFC setting must demonstrate a general ~~processional~~professional or educational background in the following areas:

(A) case management, assessment and treatment planning;

(B) treatment of victims of physical, emotional, and sexual abuse;

(C) treatment of children with attachment disorders;

(D) treatment of children with hyperactivity or attention deficit disorders;

(E) treatment methodologies for emotionally disturbed children and youth;

(F) normal childhood development and the effect of abuse and/or neglect on childhood development;

(G) anger management;

(H) crisis intervention; and

(I) trauma informed methodology.

(3) **Licensed Psychiatrist and/or psychologist.** TFC agencies must provide staff with access to professional psychiatric or psychological consultation as deemed necessary for the planning, implementation and appropriate management of the resident's treatment. See OAC 317:30-5-240.3(a) and OAC 317:25-275.

(4) **Treatment Parent Specialist (TPS).** The TPS serve as integral members of the team of professionals providing services for the child. The TPS receives special training in mental health issues, behavior management and parenting techniques; and implements the in-home portion of the treatment plan with close supervision and support. They provide services for the child, get the child to therapy and other treatment appointments, write daily notes about interventions and attend treatment team meetings. The TPS must be under the supervision of a licensed behavioral health professional of the foster care agency and meet the following criteria:

(A) have a high school diploma or equivalent;

(B) be employed by the foster care agency as a foster parent complete with OSBI and OKDHS background screening;

(C) completion of therapeutic foster parent training outlined in this section;

(D) have a minimum of twice monthly face to face supervision with the licensed, or under-supervision for licensure, LBHP, independent of the child's family therapy;

(E) have weekly contact with the foster care agency professional staff; and

(F) complete required annual trainings.

(c) **Agency assurances.** The TFC agency must ensure that each individual that renders treatment services (whether employed by or contracted by the agency) meets the minimum provider qualifications for the service. Individuals eligible for direct enrollment must have a contract on file with the Oklahoma Health Care Authority.

(d) **Policies and Procedures.** Eligible TFC agency providers that are defined in section OAC 317:30-5-740(a) shall have written policies and procedures for the orientation of new staff and foster parents which is reviewed and updated annually, for the following:

(1) pre-service training of foster parents in treatment methodologies and service needs of emotionally and behaviorally disturbed children;

(2) treatment of victims of physical, emotional, and sexual abuse;

(3) treatment of children with attachment disorders;

(4) treatment of children with hyperactive or attention deficit disorders;

(5) normal childhood development and the effect of abuse and/or neglect on childhood development;
(6) treatment of children and families with substance use disorders;
(7) the Inpatient Mental Health and Substance Abuse Treatment of Minors Act;
(8) anger management;
(9) inpatient authorization procedures;
(10) crisis intervention;
(11) grief and loss issues for children in foster care;
(12) the significance/value of birth families to children receiving outpatient behavioral health services in a foster care setting; and
(13) trauma informed methodology.

317:30-5-741. Coverage by category

(a) **Adults.** Outpatient Behavioral Health Services in Therapeutic Foster settings are not covered for adults.

(b) **Children.** Outpatient behavioral health services are allowed in therapeutic foster care settings for certain children and youth as medically necessary. The children and youth receiving services in this setting have special psychological, social and emotional needs, requiring more intensive, therapeutic care than can be found in the traditional foster care setting. The designated children and youth must continually meet medical necessity criteria to be eligible for coverage in this setting.

(c) **Medical necessity criteria.** Medical necessity criteria is delineated as follows:

(1) A diagnosis from the most recent edition of "The Diagnostic and Statistical Manual of Mental Disorders" (DSM), with the exception of V codes and adjustment disorders, with a detailed description of the symptoms supporting the diagnosis. Children with a provisional diagnosis may be admitted for a maximum of 30 days. An assessment must be completed by a Licensed Behavioral Health Professional (LBHP) or Licensure Candidate as defined in OAC 317:30-5-240.3(a) and (b) within the 30 day period resulting in a diagnosis from the most recent edition of "the Diagnostic and Statistical Manual of Mental Disorders"(DSM) with the exception of V codes and adjustments disorders, with a detailed description of the symptoms supporting the diagnosis to continue RBMS in a foster care setting.

(2) Conditions are directly attributed to a mental illness/serious emotional disturbance as the primary need for professional attention.

(3) It has been determined by the inpatient authorization reviewer that the current disabling symptoms could not have been or have not been manageable in a less intensive treatment program.

(4) Evidence that the child's presenting emotional and/or behavioral problems prohibit full integration in a family/home setting without the availability of 24 hour crisis response/behavior management and intensive clinical interventions from professional staff, preventing the child from living in a traditional family home.

(5) The child is medically stable and not actively suicidal or homicidal and not in need of substance abuse detoxification services.

(6) The legal guardian/parent of the child (OKDHS/OJA if custody child) agrees to actively participate in the child's treatment needs and planning.

[OAR Docket #15-535; filed 6-12-15]

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

[OAR Docket #15-518]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
317:35-1-2 [AMENDED]
Subchapter 5. Eligibility and Countable Income
Part 1. Determination of Qualifying Categorical Relationship
317:35-5-4 [AMENDED]
317:35-5-4.1 [AMENDED]
317:35-5-4.2 [NEW]
317:35-5-4.3 [NEW]
Subchapter 7. Medical Services
Part 7. Certification, Redetermination and Notification
317:35-7-61.1 [AMENDED]
Subchapter 9. ~~ICF/MR~~ICF/IID, ~~HCBW/MR~~HCBW/IID, and Individuals Age 65 or Older In Mental Health Hospitals
Part 5. Determination of Medical Eligibility for ~~ICF/MR~~ICF/IID, ~~HCBW/ID~~HCBW/IID, and Individuals Age 65 or Older In Mental Health Hospitals
317:35-9-48.1 [AMENDED]
(Reference APA WF # 14-33)
AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 409.31-409.34; 42 CFR 440.10; Public Law 111-256
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 23, 2014
COMMENT PERIOD:
January 16, 2015 through February 16, 2015
PUBLIC HEARING:
February 18, 2015
ADOPTION:
March 30, 2015
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 31, 2015
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 8, 2015
FINAL ADOPTION:
June 8, 2015
EFFECTIVE:
August 27, 2015
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Policy is amended to change the TEFRA program eligibility rules to match federal guidelines for level of care (LOC).
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 1. GENERAL PROVISIONS

317:35-1-2. Definitions

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

"Acute Care Hospital" means an institution that meets the requirements of 42 CFR, Section 440.10 and:

(A) is maintained primarily for the care and treatment of patients with disorders other than mental diseases;

(B) is formally licensed or formally approved as a hospital by an officially designated authority for state standard setting; and

(C) meets the requirements for participation in Medicare as a hospital.

"Advantage Administration (AA)" means the Oklahoma Department of Human Services (OKDHS) which performs certain administrative functions related to the ADvantage Waiver.

"Aged" means an individual whose age is established as 65 years or older.

"Agency partner" means an agency or organization contracted with the OHCA that will assist those applying for services.

"Aid to Families with Dependent Children (AFDC)" means the group of low income families with children described in Section 1931 of the Social Security Act. The Personal Responsibility and Work Opportunity Act of 1996 established the new eligibility group of low income families with children and linked eligibility income and resource standards and methodologies and the requirement for deprivation for the new group to the State plan for Aid to Families with Dependent Children in effect on July 16, 1996. Oklahoma has elected to be less restrictive for all SoonerCare members related to AFDC. Effective January 1, 2014, children covered under Section 1931 are related to the children's group, and adults covered under Section 1931 are related to the parent and caretaker relative group. The Modified Adjusted Gross Income (MAGI) methodology is used to determine eligibility for these groups.

"Area nurse" means a registered nurse in the OKDHS Aging Services Division, designated according to geographic areas who evaluates the UCAT and determines medical eligibility for Personal Care, ADvantage Waiver, and Nursing Facility services. The area nurse also approves care plan and service plan implementation for Personal Care services.

"Area nurse designee" means a registered nurse selected by the area nurse who evaluates the UCAT and determines medical eligibility for Personal Care, ADvantage Waiver, and Nursing Facility services.

"Authority" means the Oklahoma Health Care Authority (OHCA).

"Blind" means an individual who has central visual acuity of 20/200 or less in the better eye with the use of a correcting lens.

"Board" means the Oklahoma Health Care Authority Board.

"Buy-in" means the procedure whereby the OHCA pays the member's Medicare premium.

(A) **"Part A Buy-in"** means the procedure whereby the OHCA pays the Medicare Part A premium for individuals determined eligible as Qualified Medicare Beneficiaries Plus (QMBP) who are enrolled in Part A and are not eligible for premium free enrollment as explained under Medicare Part A. This also includes individuals determined to be eligible as Qualified Disabled and Working Individuals (QDWI).

(B) **"Part B Buy-in"** means the procedure whereby the OHCA pays the Medicare Part B premium for categorically needy individuals who are eligible for Part B Medicare. This includes individuals who receive TANF or the State Supplemental Payment to the Aged, Blind or Disabled, and those determined to be Qualified Medicare Beneficiary Plus (QMBP), Specified Low Income Medicare Beneficiaries (SLMB) or Qualifying Individual-1 (QI-1). Also included are individuals who continue to be categorically needy under the PICKLE amendment and those who retain eligibility after becoming employed.

"Caretaker relative" means a person other than the biological or adoptive parent with whom the child resides who meets the specified degree of relationship within the fifth degree of kinship.

"Case management" means the activities performed for members to assist them in accessing services, advocacy and problem solving related to service delivery.

"Categorically needy" means that income and, when applicable, resources are within the standards for the category to which the individual is related.

"Categorically related" or "related" means the individual meets basic eligibility requirements for an eligibility group.

"Certification period" means the period of eligibility extending from the effective date of certification to the date of termination of eligibility or the date of the next periodic redetermination of eligibility.

"County" means the Oklahoma Department of Human Services' office or offices located in each county within the State.

"Custody" means the custodial status, as reported by the Oklahoma Department of Human Services.

"Deductible/Coinsurance" means the payment that must be made by or on behalf of an individual eligible for Medicare before Medicare payment is made. The coinsurance is that part of the allowable medical expense not met by Medicare, which must be paid by or on behalf of an individual after the deductible has been met.

(A) For Medicare Part A (Hospital Insurance), the deductible relates to benefits for ~~in patient~~inpatient services while the patient is in a hospital or nursing facility. After the deductible is met, Medicare pays the remainder of the allowable cost.

(B) For Medicare Part B (Medical Insurance), the deductible is an annual payment that must be made before Medicare payment for medical services. After the deductible is met, Medicare pays 80% of the allowable charge. The remaining 20% is the coinsurance.

"Disabled" means an individual who is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death, or which has lasted (or can be expected to last) for a continuous period of not less than 12 months.

"Disabled child" means for purposes of Medicaid Recovery a child of any age who is blind, or permanently and totally disabled according to standards set by the Social Security Administration.

"Estate" means all real and personal property and other assets included in the member's estate as defined in Title 58 of the Oklahoma Statutes.

"Gatekeeping" means the performance of a comprehensive assessment by the OKDHS nurse utilizing the Uniform Comprehensive Assessment Tool (UCAT) for the determination of Medical eligibility, care plan development, and the determination of Level of Care for Personal Care, ADvantage Waiver and Nursing Facility services.

"Ineligible Spouse" means an individual who is not eligible for SSI but is the husband or wife of someone who is receiving SSI.

"Local office" means the Oklahoma Department of Human Services' office or offices located in each county within the State.

"LOCEU" means the Oklahoma Health Care Authority's Level of Care Evaluation Unit.

"MAGI eligibility group" means an eligibility group whose financial eligibility is determined through the Modified Adjusted Gross Income (MAGI) methodology. The groups subject to MAGI are defined in 42 CFR 435.603 and listed in OAC 317:35-6-1.

"Modified Adjusted Gross Income (MAGI)" means the financial eligibility determination methodology established by the Patient Protection and Affordable Care Act (PPACA) in 2009.

"Medicare" means the federally funded health insurance program also known as Title XVIII of the Social Security Act. It consists of four separate programs. Part A is Hospital Insurance, Part B is Medical Insurance, Part C is Medicare Advantage Plans, and Part D is Prescription Drug Coverage.

(A) **"Part A Medicare"** means Hospital Insurance that covers services for inpatient services while the patient is in a hospital or nursing facility. Premium free enrollment is provided for all persons receiving OASDI or Railroad Retirement income who are age 65 or older and for those under age 65 who have been receiving disability benefits under these programs for at least 24 months.

(i) Persons with end stage renal disease who require dialysis treatment or a kidney transplant may also be covered.

(ii) Those who do not receive OASDI or Railroad Retirement income must be age 65 or over and pay a large premium for this coverage. Under Authority rules, these individuals are not required to enroll for Part A to be eligible for SoonerCare benefits as categorically needy. They must, however, enroll for Medicare Part B. Individuals eligible as a QMBP or as a Qualified Disabled and Working Individual (QDWI) under Medicaid are required to enroll for Medicare Part A. The Authority will pay Part A premiums for QMBP individuals who do not qualify for premium free Part A and for all QDWI's.

(B) **"Part B Medicare"** means Supplemental Medical Insurance that covers physician and related medical services other than inpatient or nursing facility care. Individuals eligible to enroll in Medicare Part B are required to do so under OHCA policy. A monthly premium is required to keep this coverage in effect.

"Minor child" means a child under the age of 18.

"Nursing Care" for the purpose of Medicaid Recovery is care received in a nursing facility, an intermediate care facility for ~~the mentally retarded~~individuals with intellectual disabilities or other medical institution providing nursing and convalescent care, on a continuing basis, by professional personnel who are responsible to the institution for professional medical services.

"OCSS" means the Oklahoma Department of Human Services' Oklahoma Child Support Services (formerly Child Support Enforcement Division).

"OHCA" means the Oklahoma Health Care Authority.

"OHCA Eligibility Unit" means the group within the Oklahoma Health Care Authority that assists with the eligibility determination process.

"OKDHS" means the Oklahoma Department of Human Services.

"OKDHS nurse" means a registered nurse in the OKDHS Aging Services Division who meets the certification requirements for UCAT Assessor and case manager, and who conducts the uniform assessment of individuals utilizing the Uniform Comprehensive Assessment Tool (UCAT) for the purpose of medical eligibility determination. The OKDHS nurse also develops care plans and service plans for Personal Care services based on the UCAT.

"Qualified Disabled and Working Individual (QDWI)" means individuals who have lost their Title II OASDI benefits due to excess earnings, but have been allowed to retain Medicare coverage.

"Qualified Medicare Beneficiary Plus (QMBP)" means certain aged, blind or disabled individuals who may or may not be enrolled in Medicare Part A, meet the Medicaid QMBP

income and resource standards and meet all other Medicaid eligibility requirements.

"Qualifying Individual" means certain aged, blind or disabled individuals who are enrolled in Medicare Part A, meet the Medicaid Qualifying Individual income and resource standards and meet all other Medicaid eligibility requirements.

"Qualifying Individual-1" means a Qualified Individual who meets the Qualifying Individual-1 income and resource standards.

"Reasonably compatible" means that there is no significant discrepancy between information declared by a member or applicant and other information available to the agency. More specific policies and procedures for determining whether a declaration is reasonably compatible are detailed in Oklahoma's Verification Plan.

"Recipient lock-in" means when a member is restricted to one primary physician and/or one pharmacy. It occurs when the OHCA determines that a SoonerCare member has used multiple physicians and/or pharmacies in an excessive manner over a 12-month period.

"Scope" means the covered medical services for which payment is made to providers on behalf of eligible individuals. The Oklahoma Health Care Authority Provider Manual (OAC 317:30) contains information on covered medical services.

"Specified Low Income Medicare Beneficiaries (SLMB)" means individuals who, except for income, meet all of the eligibility requirements for QMBP eligibility and are enrolled in Medicare Part A.

"TEFRA" means the Tax Equity and Fiscal Responsibility Act of 1982 (Public Law 97-248). TEFRA provides coverage to certain disabled children living in the home who would qualify for SoonerCare if residents of nursing facilities, ~~ICF/MRs~~ICF/IIDs, or inpatient acute care hospital stays are expected to last not less than 60 days.

"Worker" means the OHCA or OKDHS worker responsible for assisting in eligibility determinations.

SUBCHAPTER 5. ELIGIBILITY AND COUNTABLE INCOME

PART 1. DETERMINATION OF QUALIFYING CATEGORICAL RELATIONSHIP

317:35-5-4. Determining categorical relationship to the disabled

An individual is related to disability if he/she is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death, or which has lasted (or can be expected to last) for a continuous period of not less than 12 months.

(1) **Determination of categorical relationship to the disabled by SSA.** The procedures outlined in (A) through (G) of this paragraph are applicable when determining categorical relationship based on a SSA disability decision:

(A) **Already determined eligible for Social Security disability benefits.** If the applicant states he/she is already receiving Social Security benefits on the basis of disability, the information is verified by seeing the applicant's notice of award or the Social Security benefit check. If the applicant states an award letter approving Social Security disability benefits has been received but a check has not been received, this information is verified by seeing the award letter. Such award letter or check establishes categorical relationship. The details of the verification used are recorded in the case record.

(B) **Already determined eligible for SSI on disability.** If the applicant, under age 65, states he/she is already receiving SSI on the basis of his/her disability (or that a written notice of SSI eligibility on disability has been received but has not yet received a check) this information is verified by seeing the written notice or check. If neither are available, the county clears on the terminal system for the Supplemental Data Exchange (SDX) record. The SDX record shows, on the terminal, whether the individual has been approved or denied for SSI. If the individual has been approved for such benefits, the county uses this terminal clearance to establish disability for categorical relationship. The details of the verification used are recorded in the case record.

(C) **Pending SSI/SSA application or has never applied for SSI.** If the applicant says he/she has a pending SSI/SSA application, an SDX record may not appear on the terminal. Therefore, it is requested that the applicant bring the notice regarding the action taken on his/her SSI/SSA application to the county office as soon as it is received. The other conditions of eligibility are established while awaiting the SSI/SSA decision. When the SSI/SSA notice is presented, the details of the verification are recorded in the case record and the indicated action is taken on the Title XIX application. If the applicant says he/she has never applied for SSI/SSA but appears potentially eligible from the standpoint of unearned income and has an alleged disability which would normally be expected to last for a period of 12 months, he/she is referred to the SSA office to make SSI/SSA application immediately following the filing of the Title XIX application.

(D) **Already determined ineligible for SSI.** If the applicant says he/she has been determined ineligible for SSI, the written notice of ineligibility from SSA is requested to determine if the denial was based on failure to meet the disability definition. If the SSI notice shows ineligibility was due to not meeting the disability definition, and the applicant says the medical condition has not worsened since the SSI denial, the Title XIX application is denied for the same reason. If written notice is not available, the SDX record on the terminal system is used. This record shows whether the individual has been determined eligible

or ineligible for SSI. If he/she has been determined ineligible, the payment status code for ineligibility is shown. The definition of this code is found on OKDHS Appendix Q in order to determine the reason for SSI ineligibility. If the reason for SSI ineligibility was based on failure to meet the disability definition, the Title XIX application is denied for the same reason and the details of the verification are recorded in the case record. If the reason for SSI ineligibility was based on some reason other than failure to meet the disability definition (and therefore, a determination of disability was not made), the Level of Care Evaluation Unit (LOCEU) must determine categorical relationship. In any instance in which an applicant who was denied SSI on "disability" states the medical condition has worsened since the SSI denial, he/she is referred to the SSA office to reapply for SSI immediately following the filing of the Title XIX application.

(E) **Already determined ineligible for Social Security disability benefits.** If the applicant says he/she has been determined ineligible for Social Security disability benefits, he/she is requested to provide written notice of ineligibility to determine if the denial was based on failure to meet the disability definition. If the SSA notice shows ineligibility was due to not meeting the disability definition, and the applicant says the medical condition has not worsened since the denial, the Title XIX application is denied for the same reason. The details of the verification used are recorded in the case record. If the written notice is not available, TPQY procedure is used to verify the denial and the reason for ineligibility. If the reason for ineligibility was based on failure to meet the disability definition, the Title XIX application is denied for the same reason and the details of the verification are recorded in the case record. If the reason for ineligibility was based on some reason other than failure to meet the disability definition (and a determination of disability was, thus, not made), the LOCEU must determine categorical relationship. In any instance in which an applicant who was denied Social Security benefits on disability states the medical condition has worsened since the denial, he/she is referred to the SSA office to reapply immediately following the filing of the Title XIX application.

(F) **Determined retroactively eligible for SSA/SSI due to appeal.** If an individual becomes retroactively eligible for SSA/SSI due to a decision on an appeal, categorical relationship is established as of the effective date of the retroactive disability decision. Payment will be made for medical services only if the claim is received within 12 months from the date of medical services. If the effective date of the retroactive disability decision does not cover the period of the medical service because the SSA/SSI application was made subsequent to the service, a medical social summary with pertinent medical information is sent to the LOCEU for a categorical relationship decision for the time period of the medical service.

(G) **SSA/SSI appeal with benefits continued.** A Title XIX recipient who has filed an appeal due to SSA's determination that he/she is no longer disabled may continue to receive SSA benefits. The recipient has the option to have Title XIX benefits continued until the appeal decision has been reached. After the decision has been reached, the appropriate case action is taken. If SSA's decision is upheld, an overpayment referral is submitted for any Title XIX benefits the recipient received beginning with the month that SSA/SSI determined the recipient did not meet disability requirements.

(H) **Applicant deceased.** Categorical relationship to the disabled is automatically established if an individual dies while receiving a medical service or dies as a result of an illness for which he/she was hospitalized if death occurs within two months after hospital release. The details of the verification used are recorded in the case record.

(2) **Determination of categorical relationship to the disabled by the LOCEU.**

(A) A disability decision from the LOCEU to determine categorical relationship to the disabled is required only when SSA makes a disability decision effective after medical services were received or when the SSA will not make a disability decision. The LOCEU is advised of the basis for the referral. SSA does not make disability decisions on individuals who:

(i) have been determined ineligible by SSA on some condition of eligibility other than disability,

(ii) have unearned income in excess of the SSI standard and, therefore, are not referred to SSA, or

(iii) do not have a disability which would normally be expected to last 12 months but the applicant disagrees.

(B) A disability decision from the LOCEU is not required if the disability obviously will not last 12 months and the individual agrees with the short term duration. The case record is documented to show the individual agrees with the short term duration.

(C) The local OKDHS office is responsible for submitting a medical social summary on OKDHS form ABCDM-80-D 08MA022E with pertinent medical information substantiating or explaining the individual's physical and mental condition. The medical social summary should include relevant social information such as the worker's personal observations, details of the individual's situation including date of onset of the disability, and the reason for the medical decision request. The worker indicates the beginning date for the categorical relationship to disability. Medical information submitted might include physical exam results, psychiatric, lab, and x-ray reports, hospital admission and discharge summaries, and/or doctors' notes and statements. Copies of medical and hospital bill and OKDHS Form 08MA005E are not

normally considered pertinent medical information by themselves. Current (less than 90 days old) medical information is required for the LOCEU to make a decision on the client's current disability status. If existing medical information cannot be obtained without cost to the client, the county administrator authorizes either payment for existing medical information or one general physical examination by a medical or osteopathic physician of the client's choice. The physician cannot be in an intern, residency or fellowship program of a medical facility, or in the full-time employment of Veterans Administration, Public Health Service or other Agency. Such examination is authorized by use of OKDHS form 08MA016E, Authorization for Examination and Billing. The OKDHS worker sends the 08MA016E and OKDHS form 08MA080E, Report of Physician's Examination, to the physician who will be completing the exam.

(i) **Responsibility of Medical Review Team in the LOCEU.** The responsibilities of the Medical Review Team in the LOCEU include:

(I) The decision as to whether the applicant is related to Aid to the Disabled.

(II) The effective date (month and year) of eligibility from the standpoint of disability. (This date may be retroactive for any medical service provided on or after the first day of the third month prior to the month in which the application was made.)

(III) A request for additional medical and/or social information when additional information is necessary for a decision.

(IV) Authorizing specialists' examinations as needed.

(V) Setting a date for re-examination, if needed.

(ii) **Specialist's examination.** If, on receipt of the medical information from the county office, the LOCEU needs additional medical information, the LOCEU may, at their discretion, make an appointment for a specialist's examination by a physician selected by the medical member of the team and authorize it on Form M-S-32, Request to Physician for Examination and Authorization for Billing, routing the original of the form to the examining physician and a copy to the county office. As soon as the county receives a copy of Form M-S-32, the worker immediately notifies the individual of the appointment and explains that failure to keep the appointment with the specialist without good cause will result in denial of the application (or closure of the case in instances of determination of continuing disability). The worker assists the individual in keeping the appointment, if necessary.

(I) If the specialist requires additional laboratory work or X-rays, he/she should call the LOCEU for authorization. The LOCEU is responsible for making the decision regarding the request. If additional medical services are authorized, another Form M-S-32 will be completed.

(II) If the individual notifies the worker at least 24 hours prior to the date of the examination that he/she cannot keep the appointment, this constitutes good cause. In such an instance, the worker cancels the appointment, makes a new appointment, and submits information regarding the cancellation and the date of a new appointment to the LOCEU.

(III) When the individual fails to keep the appointment without advance notice, good cause must be determined. The worker determines the reasons and submits a memorandum to the LOCEU for a decision on good cause.

(IV) If the appointment was missed due to illness, the illness must be supported by a written statement from a physician. If missed for some reason other than illness, the reason must be supported by an affidavit signed by someone other than the individual or his/her representative and sworn to before a notary public or other person authorized to administer oaths. If, in the opinion of the LOCEU, good cause is established, the LOCEU and the county follow the same procedures as outlined in (2)(C)(ii) of this Section for any other specialist's examination. If, in the opinion of the LOCEU, good cause is not established, the LOCEU notifies the local office. The local office is responsible for denying the application or closing the case with notification to individual in accordance with OHCA and Department policy.

(D) When the LOCEU has made a determination of categorical relationship to disability and SSA later renders a different decision, the county uses the effective date of the SSA approval or denial as their date of disability approval or denial. No overpayment will occur based solely on the SSA denial superseding the LOCEU approval.

(E) Public Law 97-248, the Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982, provides coverage to certain disabled children living in the home if they would qualify for Medicaid as residents of nursing facilities, ~~ICF/MRs~~ICF/IIDs, or inpatient acute care hospital stays expected to last not less than 60 days. In addition to disability, LOCEU determines the appropriate level of care and cost effectiveness.

(3) **Determination of categorical relationship to the disabled based on TB infection.** Categorical relationship to disability is established for individuals with a diagnosis of tuberculosis (TB). An individual is related to disability for TB related services if he/she has verification of an active TB infection established by a medical practitioner.

(4) **Determination of categorical relationship to the disabled for TEFRA.** Section 134 of TEFRA allows

states, at their option, to make Medicaid benefits available to children, under 19 years of age, living at home who are disabled as defined by the Social Security Administration, even though these children would not ordinarily be eligible for SSI benefits because of the deeming of parental income or resources. Under TEFRA, a child living at home who requires the level of care provided in an acute care hospital (for a minimum of 60 days), nursing facility or intermediate care facility for ~~the mentally retarded~~individuals with intellectual disabilities, is determined eligible using only his/her income and resources as though he/she were institutionalized.

317:35-5-4.1. Special level of care and cost effectiveness application procedures for TEFRA

(a) In order for a child to be eligible for TEFRA, he/she must require a level of care provided in an acute care hospital for a minimum of 60 days, or a nursing facility or intermediate care facility for ~~the mentally retarded~~individuals with intellectual disabilities for a minimum of 30 days. It must also be appropriate to provide care to the child at home. The level of care determination is made by LOCEU. The level of care certification period may be for any number of months that the LOCEU determines appropriate. At the time of application, an assessment form is provided to the applicant for completion by the child's physician. Once completed by the physician and returned to the OKDHS worker, the ~~Assessment~~assessment form is forwarded to the LOCEU along with the request for a disability determination (if needed).

(b) The estimated cost of caring for the child at home must not exceed the estimated cost of treating the child within an institution at the appropriate level of care, i.e., hospital, NF, or ~~ICF/MR~~ICF/IID. The initial cost analysis is established by LOCEU based on the information provided by the TEFRA-1 Assessment form, OKDHS worker, and medical information used in the relationship to disability determination.

(c) The level of care determination and cost effectiveness analysis are ~~posted~~reported by LOCEU ~~on MEDATS~~annually.

317:35-5-4.2. Determining nursing facility level of care for TEFRA children

In order to determine nursing facility level of care for TEFRA children:

(1) The child must be age 18 years or younger and expected to meet the following criteria for a minimum of 30 days.

(A) The child must:

(i) have a long-term medical or physical condition which significantly diminishes his/her functional capacity;

(ii) require health-related services that are so inherently complex that it can only be safely and effectively provided by technical or professional medical personnel, such as a registered nurse, licensed practical nurse, etc., and are ordinarily provided in a nursing facility. Without these services, the child is at risk of being institutionalized within a nursing facility; and

(iii) the services needed are above general supervision but can be provided safely in the child's home. The services are usually required 24 hours per day and are ordinarily provided in a nursing facility inpatient basis (see 42 CFR 409.31-409.34 for the types of services and service frequencies that would be normally considered as nursing facility level of care).

(B) The service(s) needed has been ordered by a physician.

(2) The services needed by the child must be greater than the services provided by an ICF/IID and less than those provided in a hospital.

317:35-5-4.3. Determining acute hospital level of care for TEFRA children

In order to determine acute hospital level of care for TEFRA children:

(1) The child must be age 18 years or younger and expected to meet the following criteria for at least 60 days.

(A) The child must need services that:

(i) are ordinarily provided in a hospital setting for the care and treatment of inpatients; and

(ii) are provided in a hospital that is maintained primarily for the care and treatment of patients with disorders other than mental health diagnosis.

(B) The service(s) needed has been ordered by, and is provided under the direction of, a physician.

(2) The services needed by the child must be greater than the services provided by an ICF/IID and a nursing facility.

SUBCHAPTER 7. MEDICAL SERVICES

PART 7. CERTIFICATION, REDETERMINATION AND NOTIFICATION

317:35-7-61.1. Special redetermination procedures for TEFRA

~~The~~In addition to redetermining the level of care annually, the OHCA also conducts an annual cost effectiveness review for all active TEFRA children. The local county office is notified of the results of the review for any necessary case action. If OHCA determines the child does not meet any level of care, is no longer disabled, or the estimated cost of care in the home is greater than the estimated cost of care in an institution, at the appropriate level of care, the case is closed.

SUBCHAPTER 9. ~~ICF/MR~~ICF/IID, ~~HCBW/MR~~HCBW/IID, AND INDIVIDUALS AGE 65 OR OLDER IN MENTAL HEALTH HOSPITALS

PART 5. DETERMINATION OF MEDICAL ELIGIBILITY FOR ~~ICF/MR~~ICF/IID, ~~HCBW/ID~~HCBW/IID, AND INDIVIDUALS AGE 65 OR OLDER IN MENTAL HEALTH HOSPITALS

317:35-9-48.1. Determining ~~ICF/MR~~ICF/IID institutional level of care for TEFRA children

In order to determine ICF/IID level of care for TEFRA children:

(1) The child must be age 18 years or younger and expected to meet the following criteria for at least 30 days.

(A) Applicants under age three must:

(i) have a diagnosis of a developmental disability; and

(ii) have been evaluated by the SoonerStart Early Intervention Program and found to have severe dysfunctional deficiencies with findings of at least two standard deviations in at least two ~~developmental~~total domain areas.

(B) Applicants age three years and older must:

(i) have a diagnosis of intellectual disability or a developmental disability; and

(ii) have received a psychological evaluation by a licensed psychologist or school psychologist certified by the Oklahoma Department of Education (ODE) within the last 12 months. The evaluation must include intelligence testing that yields a full-scale intelligence quotient, and a full-scale functional or adaptive assessment that yields a composite functional age. Eligibility for TEFRA ~~ICF/MR~~ICF/IID level of institutional care requires an IQ of ~~75~~70 or less, ~~and~~or a full-scale functional assessment ~~(Vineland or Battelle)~~ indicating a functional age composite that does not exceed 50% of the child's chronological age. In no case shall eligibility be granted for a functional age greater than eight years.

(2) Psychological evaluations are required for children who are approved for TEFRA under ~~ICF/MR~~ICF/IID level of care. Children under age six will be required to undergo a full psychological evaluation, including both intelligence testing and adaptive/functional assessment, by a licensed psychologist or school psychologist certified by the ODE, at age three~~ and again at~~, age six, and, if medically necessary, thereafter to ascertain continued eligibility for TEFRA under the ~~ICF/MR~~ ICF/IID level of institutional care. The psychological evaluation must be completed and submitted to the LOCEU no later than 90 days following the child's third and sixth birthday, and, if medically necessary, thereafter.

[OAR Docket #15-518; filed 6-12-15]

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

[OAR Docket #15-497]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Coverage and Exclusions
317:35-3-1 [AMENDED]
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The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 thru 5016 of Title 63 of Oklahoma Statutes; 42 CFR 431.54; 42 CFR 440.230
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SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Policy is revised to clean up language regarding the pharmacy lock-in program. Current policy locks members in to one primary physician and/or on pharmacy. Policy is revised to allow members to be locked in to an approved prescriber rather than primary care physician and pharmacy.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 3. COVERAGE AND EXCLUSIONS

317:35-3-1. ~~Payment for Medicaid~~Reimbursement

(a) **Payment eligibility.** In order for the Authority to make payment for ~~Medicaid~~SoonerCare services, the individual must be determined eligible to have such payment made by:

(1) having eligibility previously determined, or

(2) making application for ~~Medicaid~~SoonerCare at the time the medical services is requested, and having eligibility determined at that time.

(b) **~~Recipient~~Member lock-in.** ~~Medicaid recipients~~SoonerCare members who have demonstrated ~~Medicaid usage~~utilization above the statistical norm, during a ~~12-month~~6-month period, may be "locked-in" to ~~one primary physician~~a prescriber and/or one pharmacy for medications classified as controlled dangerous substances. If OHCA has determined that ~~Medicaid~~SoonerCare has been over-utilized, the ~~recipient~~member is notified, by letter, of the need to select a ~~primary physician~~prescriber and/or pharmacy and of their opportunity for a fair hearing. ~~A copy of the letter is sent to the DHS county office.~~ If the ~~recipient~~member does not select a ~~physician and/or pharmacy~~prescriber or pharmacy, one is selected for her/him. "Locked-in" ~~recipients~~members may obtain emergency services from a physician and/or an emergency room facility in the event of a medical emergency.

[OAR Docket #15-497; filed 6-12-15]

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

[OAR Docket #15-533]

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RULES:
Subchapter 3. Coverage and Exclusions
317:35-3-2 [AMENDED]
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The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 440.170
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n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Non-emergency transportation rules are revised to clarify eligibility and coverage criterion.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 3. COVERAGE AND EXCLUSIONS

317:35-3-2. SoonerCare transportation and subsistence

(a) The Oklahoma Health Care Authority (OHCA) is responsible for assuring that necessary transportation is available to all eligible SoonerCare members who are in need of SoonerCare medical services in accordance with 42 CFR 431.53. The agency contracts with a broker to provide statewide curb to curb coverage for non-emergency transportation under the SoonerRide program. The broker provides the most appropriate and least costly mode of transportation necessary to meet the individual needs of SoonerCare members. As the Medicaid Agency, OHCA is the payer of last resort, with few exceptions. When other resources are available, those resources must first be utilized. Exceptions to this policy are those receiving medical treatment through Indian Health Services and those eligible for the Crime Victims Compensation Act. The agency contracts directly with ambulance and air providers for all other transportation needs for eligible members not provided by SoonerRide. SoonerRide excludes those individuals who are categorized as:

(1) Qualified Medicare Beneficiaries(QMB)when SoonerCare pays only the Medicare premium, deductible, and co-pay;

(2) Specified Low Income Medicare Beneficiaries (SLMB)only;

(3) Qualifying Individuals-1;

(4) individuals who are in an institution for mental disease (IMD);

(5) inpatient;

(6) institutionalized~~(i.e. long-term care facility)~~;

(7) Home and Community Based Waiver members with the exception of the In-home Supports Waiver for Children, the ADvantage Waiver, the Living Choice demonstration, ~~the Sooner Seniors Waiver, the My Life; My Choice Waiver~~ and the Medically Fragile Waiver.

(b) Members seeking medically necessary non-emergency transportation will be required to contact the SoonerRide reservation center. Contact will be made via a toll-free phone number which is answered Monday through Saturday, 8 a.m. to 6 p.m. Whenever possible, the member is required to notify SoonerRide at least 72 hours prior to the appointment. The member is asked to furnish the SoonerRide reservation center their SoonerCare member number, home address, the time and date of the medical appointment, the address and phone number of the medical provider, and any physical/mental limitations which will impact the type of transportation needed. SoonerRide makes arrangements for the most appropriate, least costly transportation. SoonerRide verifies appointments when appropriate. If the member disagrees with the transportation arranged or denied by SoonerRide, an appeal must

be filed with OHCA according to OAC 317:2-1-2. The appropriateness of transportation may be appealed only to the extent that the transportation does not meet the medical needs of the member. Dissatisfaction with the use of public transportation, shared rides, type of vehicle, etc., is not appropriate grounds for appeal. The Oklahoma Health Care Authority's decision is final.

(1) **Authorization for transportation by private vehicle or bus.** Transportation by private vehicle or bus is administered through the broker when it is necessary for an eligible member to receive medical services.

(2) **Authorization for transportation by taxi.** Taxi service may be authorized at the discretion of the broker.

(3) **Transportation by ambulance (ground, air ambulance or helicopter).** Transportation by ambulance is compensable for individuals eligible for SoonerCare benefits when other available transportation does not meet the medical needs of the individual. Payment is made for ambulance transportation to and/or from a medical facility for medical care compensable under SoonerCare.

(4) **Transportation by airplane.** When an individual's medical condition is such that transportation out-of-state by a commercial airline is required, approval for airfare must be secured by telephoning the OHCA who will make the necessary flight arrangements.

(5) **Subsistence (lodging and meals).** Payment for lodging and/or meals assistance for an eligible member and/or an approved medical escort is provided only when medically necessary in connection with transportation to and from SoonerCare compensable services. The member and/or medical escort must make a reasonable effort to secure lodging at a hospital or non-profit organization. The Oklahoma Health Care Authority (OHCA) has discretion and final authority to approve or deny any lodging and/or meal services.

(A) Lodging and/or meals are reimbursable when prior approved. Payment for lodging and/or meals is limited to a period of up to 24 hours prior to the start of the member's medical services and up to 24 hours after the services end. Lodging is approved for the member and/or one approved medical escort. The following factors may be considered by OHCA when approving reimbursement for a member and/or one medical escort:

(i) travel is to obtain specialty care; and

(ii) the trip cannot be completed during SoonerRide operating hours;

(iii) the trip is 100 miles or more from the member's residence, as listed in the OHCA system, to the medical facility; and/or

(iv) the member's medical treatment requires an overnight stay, or the condition of the member discourages traveling.

(B) When a member is not required to have a PCP or when a PCP referral is not required to obtain a SoonerCare covered service, a member may go to any provider they choose but SoonerCare will not reimburse for transportation, lodging, or meals if the distance is beyond what is considered the nearest appropriate facility.

(C) ~~Meals will be reimbursed only if an overnight stay occurs and the stay meets the lodging criteria is met.~~Meals will be reimbursed if lodging criteria is met, and duration of trip is or exceeds 18 hours.

(D) Reimbursement for meals is based on a daily per diem and may be used for breakfast, lunch or dinner, or all three meals, whichever is required.

(E) During inpatient or outpatient medical stays, lodging and/or meals services are reimbursed for a period of up to 14 days without prior approval; stays exceeding the 14 day period must be prior approved. A member may not receive reimbursement for lodging and/or meals services for days the member is an inpatient in a hospital or medical facility.

(F) For eligible members in the Neonatal Intensive Care Unit (NICU) a minimum visitation of 6 hours per day for the medical escort is required for reimbursement of lodging and/or meals services. Non-emergency transportation services for medically necessary visitation may be provided for eligible medical escorts.

(G) Lodging must be with a SoonerCare contracted Room and Board provider, when available, before direct reimbursement to a member and/or medical escort can be approved. If the lodging provider provides meals the member and/or medical escort is not eligible for separate reimbursement and may not seek assistance for meals obtained outside of the contracted Room and Board provider facility. If lodging and/or meal assistance with contracted Room and Board providers is not available, the member and/or medical escort may request reimbursement assistance by submitting the appropriate travel reimbursement forms. The travel reimbursement forms may be obtained by contacting SoonerCare Care Management division. Any lodging and/or meal expenses claimed on the travel reimbursement forms must be documented with the required receipts and medical records to document the lodging and/or meals criteria have been met. Reimbursement will not exceed established state per diem amounts. The OHCA has discretion and the final authority to approve or deny lodging and/or meals reimbursement.

(6) **Escort assistance required.** Payment for transportation and lodging and/or meals of one medical escort may be approved if the service is required. If the Oklahoma Department of Human Services (OKDHS) removes a child from his/her home, a court must appoint a temporary guardian. During this time the temporary guardian is eligible for escort related lodging and/or meals services. ~~The custodial parent, if under investigation, is not eligible.~~ It is the responsibility of the OHCA to determine this necessity. The decision should be based on the following circumstances:

(A) when the individual's health or disability does not permit traveling alone; and

(B) when the individual seeking medical services is a minor child.

[OAR Docket #15-533; filed 6-12-15]

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

[OAR Docket #15-529]

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RULES:
Subchapter 5. Eligibility and Countable Income
Part 3. Non-Medical Eligibility Requirements
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SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The methodology for determining Insure Oklahoma (IO) eligibility, for both IP and ESI, is changing to the Modified Adjusted Gross Income (MAGI) methodology. Additionally, the reasonable opportunity for SoonerCare members to obtain citizenship or alienage documentation is amended.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 5. ELIGIBILITY AND COUNTABLE INCOME

PART 3. NON-MEDICAL ELIGIBILITY REQUIREMENTS

317:35-5-25. Citizenship/alien status and identity verification requirements

(a) **Citizenship/alien status and identity verification requirements.** Verification of citizenship/alien status and identity are required for all adults and children approved for SoonerCare. An exception is individuals who are initially eligible for SoonerCare as deemed newborns; according to Section 1903(x) of the Social Security Act, they will not be required to further document citizenship or identity at any subsequent SoonerCare eligibility redetermination. They are considered to have provided satisfactory documentation of citizenship and identity by virtue of being born in the United States.

(1) The types of acceptable evidence that verify identity and citizenship include:

(A) United States (U.S.) Passport;

(B) Certificate of Naturalization issued by U.S. Citizenship & Immigration Services (USCIS)(Form N-550 or N-570);

(C) Certificate of Citizenship issued by USCIS (Form N-560 or N-561);

(D) Copy of the Medicare card or printout of a BENDEX or SDX screen showing receipt of Medicare benefits, Supplemental Security Income or disability benefits from the Social Security Administration; or

(E) Tribal membership card or Certificate of Degree of Indian Blood (CDIB) card, with a photograph of the individual.

(2) The types of acceptable evidence that verify citizenship but require additional steps to obtain satisfactory evidence of identity are listed in subparagraphs (A) and (B). Subparagraph (A) lists the most reliable forms of verification and is to be used before using items listed in (B). Subparagraph (B) lists those verifications that are less reliable forms of verification and are used only when the items in (A) are not attainable.

(A) Most reliable forms of citizenship verification are:

(i) A U.S. public Birth Certificate showing birth in one of the 50 states, the District of Columbia, Puerto Rico (on or after 1/13/1941), Guam (on or after 4/10/1899), the U.S. Virgin Islands (on or after 1/17/1917), American Samoa, Swain's Island, or the Northern Mariana Islands after 11/4/1986. For Puerto Ricans whose eligibility is being determined for the first time on or after October 1, 2010 and using a birth certificate to verify citizenship, the birth certificate must be a certified birth certificate issued by Puerto Rico on or after July 1, 2010;

(ii) A Report of Birth Abroad of a U.S. citizen issued by the Department of Homeland Security or a Certification of birth issued by the State Department (Form FS-240, FS-545 or DS-1350);

(iii) A U.S. Citizen ID Card (Form I-179 or I-197);

(iv) A Northern Mariana Identification Card (Form I-873) (Issued by the INS to a collectively naturalized citizen of the U.S. who was born in the Northern Mariana Islands before 11/3/1986);

(v) An American Indian Card issued by the Department of Homeland Security with the classification code "KIC" (Form I-872);

(vi) A Final Adoption Decree showing the child's name and U. S. place of birth;

(vii) Evidence of U.S. Civil Service employment before 6/1/1976;

(viii) An Official U.S. Military Record of Service showing a U.S. place of birth (for example a DD-214);

(ix) Tribal membership card or Certificate of Degree of Indian Blood (CDIB) card, without a photograph of the individual, for Native Americans;

(x) Oklahoma Voter Registration Card; or

(xi) Other acceptable documentation as approved by OHCA.

(B) Other less reliable forms of citizenship verification are:

(i) An extract of a hospital record on hospital letterhead established at the time of the person's birth that was created five years before the initial application date and that indicates a U.S. place of birth. For children under 16 the evidence must have been created near the time of birth or five years before the date of application;

(ii) Life, health, or other insurance record showing a U.S. place of birth that was created at least five years before the initial application date and that indicates a U.S. place of birth;

(iii) Federal or State census record showing U.S. citizenship or a U.S. place of birth (generally for persons born 1900 through 1950). The census record must also show the applicant's/member's age; or

(iv) One of the following items that show a U.S. place of birth and was created at least five years before the application for SoonerCare. This evidence must be one of the following and show a U.S. place of birth:

(I) Seneca Indian tribal census record;

(II) Bureau of Indian Affairs tribal census records of the Navajo Indians;

(III) U.S. State Vital Statistics official notification of birth registration;

(IV) An amended U.S. public birth record that is amended more than five years after the person's birth; or

(V) Statement signed by the physician or midwife who was in attendance at the time of birth.

(3) Acceptable evidence of identity that must accompany citizenship evidence listed in (A) and (B) of paragraph (2) of this subsection includes:

(A) A driver's license issued by a U.S. state or territory with either a photograph of the individual or other identifying information such as name, age, sex, race, height, weight, or eye color;

(B) A school identification card with a photograph of the individual;

(C) An identification card issued by Federal, state, or local government with the same information included on driver's licenses;

(D) A U.S. military card or draft record;

(E) A U.S. military dependent's identification card;

(F) A Native American Tribal document including Certificate of Degree of Indian Blood, or other U.S. American Indian/Alaska Native Tribal document with a photograph of the individual or other personal identifying information;

(G) A U.S. Coast Guard Merchant Mariner card;

(H) A state court order placing a child in custody as reported by the OKDHS;

(I) For children under 16, school records may include nursery or daycare records;

(J) If none of the verification items on the list are available, an affidavit may be used for children under 16. An affidavit is only acceptable if it is signed under penalty of perjury by a parent or guardian stating the date and place of the birth of the child and cannot be used if an affidavit for citizenship was provided.

(b) **Reasonable opportunity to obtain citizenship verification.**

(1) When the applicant/member is unable to obtain citizenship or alienage verification, a reasonable opportunity is afforded to the applicant/member to obtain the evidence as well as assistance in doing so. A reasonable opportunity is afforded to the applicant/member before taking action affecting the individual's eligibility for SoonerCare. ~~The reasonable opportunity time frame usually consists of 60 days. In rare instances, the time frame may be extended to a period not to exceed an additional 60 days~~The reasonable opportunity timeframe afforded to SoonerCare members is the same as authorized under Section 1902(ee) of the Social Security act and is stated on the documentation request the agency sends to the applicant/member.

(2) The following methods of verification are the least reliable forms of verification and should only be used as a last resort:

(A) Institutional admission papers from a nursing facility, skilled care facility or other institution. Admission papers generally show biographical information for the person including place of birth; the record can be used to establish U.S. citizenship when it shows a U.S. placeof birth;

(B) Medical (clinic, doctor, or hospital) record created at least five years before the initial application date that indicates a U.S. place of birth. For children under 16, the document must have been created near the time of birth. Medical records generally show biographical information for the person including

place of birth; the record can be used to establish U.S. citizenship when it shows a U.S. place of birth. An immunization record is not considered a medical record for purposes of establishing U.S. citizenship;

(C) Written affidavit. Affidavits are only used in rare circumstances. If the verification requirements need to be met through affidavits, the following rules apply:

(i) There must be at least two affidavits by two individuals who have personal knowledge of the event(s) establishing the applicant's/member's claim of citizenship;

(ii) At least one of the individuals making the affidavit cannot be related to the applicant/member;

(iii) In order for the affidavit to be acceptable, the persons making them must be able to provide proof of their own citizenship and identity;

(iv) If the individual(s) making the affidavit has information which explains why evidence establishing the applicant's/member's claim of citizenship does not exist or cannot be readily obtained, the affidavit must contain this information as well;

(v) The State must obtain a separate affidavit from the applicant/member or other knowledgeable individual (guardian or representative) explaining why the evidence does not exist or cannot be obtained; and

(vi) The affidavits must be signed under penalty of perjury.

(c) **Alienage verification requirements.** SoonerCare services are provided as listed to the defined groups as indicated in this subsection if they meet all other factors of eligibility.

(1) **Eligible aliens (qualified aliens).** The groups listed in the following subparagraphs are eligible for the full range of SoonerCare services. A qualified alien is:

(A) an alien who was admitted to the United States and has resided in the United States for a period greater than five years from the date of entry and who was:

(i) lawfully admitted for permanent residence under the Immigration and Nationality Act;

(ii) paroled into the United States under Section 212(d)(5) of such Act for a period of at least one year;

(iii) granted conditional entry pursuant to Section 203(a)(7) of such Act as in effect prior to April 1, 1980; or

(iv) a battered spouse, battered child, or parent or child of a battered person with a petition under 204(a)(1)(A) or (B) or 244(a)(3) of the Immigration and Naturalization Act.

(B) an alien who was admitted to the United States and who was:

(i) granted asylum under Section 208 of such Act regardless of the date asylum is granted;

(ii) a refugee admitted to the United States under Section 207 of such Act regardless of the date admitted;

(iii) an alien with deportation withheld under Section 243(h) of such Act regardless of the date deportation was withheld;

(iv) a Cuban or Haitian entrant as defined in Section 501(e) of the Refugee Education Assistance Act of 1980, regardless of the date of entry;

(v) an alien who is a veteran as defined in 38 U.S.C. § 101, with a discharge characterized as an honorable discharge and not on the grounds of alienage;

(vi) an alien who is on active duty, other than active duty for training, in the Armed Forces of the United States;

(vii) the spouse or unmarried dependent child of an individual described in (C) of this paragraph;

(viii) a victim of a severe form of trafficking pursuant to Section 107(b) of the Trafficking Victims Protection Act of 2000; or

(ix) admitted as an Amerasian immigrant.

(C) permanent residents who first entered the country under (B) of this paragraph and who later converted to lawful permanent residence status.

(2) **Other aliens lawfully admitted for permanent residence (non-qualified aliens).** Non-qualified aliens are those individuals who were admitted to the United States and who do not meet any of the definitions in paragraph (1) of this subsection. Non-qualified aliens are ineligible for SoonerCare for five years from the date of entry except that non-qualified aliens are eligible for emergency services only when the individual has a medical condition (including emergency labor and delivery) with acute symptoms which may result in placing his/her health in serious jeopardy, serious impairment to bodily functions or serious dysfunction of body organ or part without immediate medical attention. The only exception is when a pregnant woman qualifies under the pregnancy related benefits covered under the Title XXI program because the newborn child will meet the citizenship requirement at birth.

(3) **Afghan Special Immigrants.** Afghan special immigrants, as defined in Public Law 110-161, who have special immigration status after December 26, 2007, are exempt from the five year period of ineligibility for SoonerCare services. All other eligibility requirements must be met to qualify for SoonerCare services. If these individuals do not meet one of the categorical relationships, they may apply and be determined eligible for Refugee Medical Assistance. Afghan special immigrants are considered lawful permanent residents.

(4) **Iraqi Special Immigrants.** Iraqi special immigrants, as defined in Public Law 110-181, who have special immigration status after January 28, 2008, are exempt from the five year period of ineligibility for SoonerCare services. All other eligibility requirements must be

met to qualify for SoonerCare services. If these individuals do not meet one of the categorical relationships, they may apply and be determined eligible for Refugee Medical Assistance. Iraqi special immigrants are considered lawful permanent residents.

(5) **Undocumented aliens.** Undocumented aliens who do not meet any of the definitions in (1)-(2) of this subsection are eligible for emergency services only when the individual has a medical condition (including emergency labor and delivery) with acute symptoms which may result in placing his/her health in serious jeopardy, serious impairment to bodily functions or serious dysfunction of body organ or part without immediate medical attention. The only exception is when a pregnant woman qualifies under the pregnancy related benefits covered under the Title XXI program because the newborn child will meet the citizenship requirement at birth.

(6) **Ineligible aliens.**

(A) Ineligible aliens who do not fall into the categories in (1) and (2) of this subsection, yet have been lawfully admitted for temporary or specified periods of time include, but are not limited to: foreign students, visitors, foreign government representatives, crewmen, members of foreign media and temporary workers including agricultural contract workers. This group is ineligible for SoonerCare, including emergency services, because of the temporary nature of their admission status. The only exception is when a pregnant woman qualifies under the pregnancy related benefits covered under the Title XXI program because the newborn child will meet the citizenship requirement at birth.

(B) These individuals are generally issued Form I-94, Arrival Departure Record, on which an expiration date is entered. This form is not the same Form I-94 that is issued to persons who have been paroled into the United States. Parolees carry a Form I-94 that is titled "Arrival-Departure Record - Parole Edition". Two other forms thatdo not give the individual "Immigrant" status are Form I-186,Nonresident Alien Mexican Border Crossing Card, and Form SW-434, Mexican Border Visitors Permit.

(7) **Preauthorization.** Preauthorization is required for payment of emergency medical services rendered to non-qualified and undocumented aliens. Persons determined as having lawful alien status must have the status verified through Systematic Alien Verification for Entitlements (SAVE).

(d) **Alienage.** A decision regarding eligibility cannot be made until the eligibility condition of citizenship and alienage is determined.

(1) **Immigrants.** Aliens lawfully admitted for permanent residence in the United States are classified as immigrants by the BCIS. These are individuals who entered this country with the express intention of residing here permanently.

(2) **Parolees.** Under Section 212(d)(5) of the Immigration and Nationality Act, individuals can be paroled into the United States for an indefinite or temporary period at the discretion of the United States Attorney General. Individuals admitted as Parolees are considered to meet the "citizenship and alienage" requirement.

(3) **Refugees and Western Hemisphere aliens.** Under Section 203(a)(7) of the Immigration and Nationality Act, Refugees and Western Hemisphere aliens may be lawfully admitted to the United States if, because of persecution or fear of prosecution due to race, religion, or political opinion, they have fled from a Communist or Communist-dominated country or from the area of the Middle East; or if they are refugees from natural catastrophes. These entries meet the citizenship and alienage requirement. Western Hemisphere aliens will meet the citizenship requirement for SoonerCare if they can provide either of the documents in subparagraphs (A) and (B) of this paragraph as proof of their alien status.

(A) Form I-94 endorsed "Voluntary Departure Granted-Employment Authorized", or

(B) The following court-ordered notice sent by BCIS to each of those individuals permitted to remain in the United States: "Due to a Court Order in Silva vs. Levi, 76 C4268 entered by District Judge John F. Grady in the District Court for the Northern District of Illinois, we are taking no action on your case. This means that you are permitted to remain in the United States without threat of deportation or expulsion until further notice. Your employment in the United States is authorized".

(4) **Special provisions relating to Kickapoo Indians.** Kickapoo Indians migrating between Mexico and the United States carry Form I-94, Arrival-Departure Record (Parole Edition). If Form I-94 carries the statement that the Kickapoo is "paroled pursuant to Section 212(d)(5) of the Immigration and Nationality Act" or that the "Kickapoo status is pending clarification of status by Congress" regardless of whether such statements are preprinted or handwritten and regardless of a specific mention of the "treaty", they meet the "citizenship and alienage" requirement. All Kickapoo Indians paroled in the United States must renew their paroled status each year at any local Immigration Office. There are other Kickapoos who have entered the United States from Mexico who carry Form I-151 or Form I-551, Alien Registration Receipt Cards. These individuals have the same status as other individuals who have been issued Form I-151 or Form I-551 and, therefore, meet the citizenship and alienage requirements. Still other Kickapoos are classified as Mexican Nationals by the BCIS. They carry Form I-94, Arrival-Departure Record, which has been issued as a visiting visa and does not make mention of the treaty. Such form does not meet the "citizenship and alienage" requirements but provides only the ineligible alien status described in (c)(4)(b) of this Section.

(5) **American Indians born in Canada.** An American Indian born in Canada, who has maintained residence in the United States since entry, is considered to be lawfully admitted for permanent residence if he/she is of at least

one-half American Indian blood. This does not include the non-citizen whose membership in an Indian tribe or family is created by adoption, unless such person is of at least 50 percent or more Indian blood. The methods of documentation are birth or baptismal certificate issued on a reservation, tribal records, letter from the Canadian Department of Indian Affairs, or school records.

(6) **Permanent non-immigrants.** Marshall Islanders and individuals from the Republic of Palau and the Federated States of Micronesia are classified as permanent non-immigrants by BCIS. They are eligible for emergency services only.

[OAR Docket #15-529; filed 6-12-15]

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

[OAR Docket #15-509]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Eligibility and Countable Income
Part 5. Countable Income and Resources
317:35-5-41.2 [AMENDED]
317:35-5-41.3 [AMENDED]
317:35-5-42 [AMENDED]
(Reference APA WF # 14-17)
AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Section 1902(f) of the Social Security Act; 42 CFR §435.120; 1915(c) Home and Community Based Services Waiver
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 23, 2014
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Approved by Governor's declaration on June 8, 2015
FINAL ADOPTION:
June 8, 2015
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August 27, 2015
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Subchapter 5. Eligibility and Countable Income
Part 5. Countable Income and Resources
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317:35-5-41.3 [AMENDED]
317:35-5-42 [AMENDED]
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32 Ok Reg 232
Docket number:
14-960
(Reference APA WF # 14-17)
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Rules are amended to come into compliance with federal regulations regarding eligibility determinations for Aged, Blind, and Disabled (ABD) individuals applying for Medicaid services.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 5. ELIGIBILITY AND COUNTABLE INCOME

PART 5. COUNTABLE INCOME AND RESOURCES

317:35-5-41.2. Miscellaneous Personal property

(a) **Property used to produce goods and services.** Personal property necessary to perform daily activities or to produce goods for home consumption is excluded if the equity value does not exceed ~~$6000~~$6,000. An equity value in excess of ~~$6000~~$6,000 is a countable resource. The property does not have to produce a 6% annual return. The ~~$6000~~$6,000 equity maximum includes all such resources in total and does not pertain to each item separately. Examples of property used to produce goods and services are tractors, wildcatting tools, mechanized equipment for gardening, livestock grown for home consumption, etc.

(b) **Cash savings and bank accounts.** Money on hand or in a savings account is considered as a countable resource. ~~The member's statement that he/she does not have any money on hand or on deposit is sufficient unless there are indications to the contrary. When there is information to the contrary or when the member does not have records to verify the amount on deposit, verification is obtained from bank records.~~Verification of the member's countable income or resources held in bank accounts or at other financial institutions can be established through an Asset Verification System (AVS). Title 56, O.S., Section 1671 provides that financial records obtained for the purpose of establishing eligibility for assistance or services must be furnished without cost to the member or the Agency.

(1) Checking accounts may or may not represent savings. Current bank statements are evaluated with the member to establish what, if any, portion of the account represents savings. Any income which has been deposited during the current month is not considered unless it exceeds what is considered as ordinary maintenance expense for the month.

(2) Accounts which are owned jointly by the member and a person not receiving SoonerCare are considered available to the member in their entirety unless it can be established what part of the account actually belongs to

each of the owners and the money is actually separated and the joint account dissolved. When the member is in a nursing facility and the spouse is in the home or if both are institutionalized, a joint bank account may be maintained with one-half of the account considered available to each.

(c) **Life insurance policies.** If the total face value of all life insurance policies owned by an individual is ~~$1500~~$1,500 or less, the policies (both face value and cash surrender value) are excluded as resources. Verification of the member's countable income or resources held in bank accounts or at other financial institutions can be established through an AVS.

(1) If the total face value of all policies owned by an individual exceeds ~~$1500~~$1,500, the net cash surrender value of such policies must be counted as resources. Life insurance policies which do not provide a cash surrender value (e.g., term insurance) are not used in determining whether the total face value of all policies is over $1,500.

(2) The face value of a life insurance policy which has been assigned to fund a prepaid burial contract must be evaluated and counted according to the policy on burial funds or, if applicable, the policy on the irrevocable burial contract.

(3) The net cash surrender value of insurance (i.e., cash surrender value less any loans or unpaid interest thereon) usually can be verified by inspection of the insurance policies and documents in the member's possession or by use of the OKDHS Form 08MP061E, Request to Insurance Company.

(4) Dividends which accrue and which remain with the insurance company increase the amount of resource. Dividends which are paid to the member are considered as income if the life insurance policy is not an excluded resource.

(5) If an individual has a life insurance policy which allows death benefits to be received while living, and the individual meets the insurance company's requirements for receiving such proceeds, the individual is not required to file for such proceeds. However, if the individual does file for and receive the benefits, the payment will be considered as income in the month it is received and countable as a resource in the following months to the extent it is available. The payment of such benefits is not considered a conversion of a resource because the cash surrender value of the insurance policy is still available to the individual. The individual is in effect, receiving the death benefits and not the cash surrender value.

(d) **Burial spaces.** The value of burial spaces for an individual, the individual's spouse or any member of the individual's immediate family will be excluded from resources. "Burial spaces" means conventional grave sites, crypts, mausoleums, urns, and other repositories which are customarily and traditionally used for the remains of deceased persons. "Immediate family" means the individual's minor and adult children, including adopted children and step-children; and the individual's brothers, sisters, parents, adoptive parents, and the spouse of these individuals. Neither dependency nor living in the same household will be a factor in determining whether a person is an immediate family member. Verification of the member's countable income or resources held in bank accounts or at other financial institutions can be established through an AVS.

(e) **Burial funds.** Revocable burial funds not in excess of ~~$1500~~$1,500 are excluded as a resource if the funds are specifically set aside for the burial arrangements of the individual or the individual's spouse. Any amount in excess of ~~$1500~~$1,500 is considered as a resource. Burial policies which require premium payments and do not accumulate cash value are not considered to be prepaid burial policies. Verification of the member's countable income or resources held in bank accounts or at other financial institutions can be established through the AVS.

(1) "Burial funds" means a prepaid funeral contract or burial trust with a funeral home or burial association which is for the individual's or spouse's burial expenses.

(2) The face value of a life insurance policy, when properly assigned by the owner to a funeral home or burial association, may be used for purchasing "burial funds" as described in (1) of this subsection. The $1,500 burial fund exclusion must also be reduced by the face value of a life insurance policy for which a funeral provider has been made the irrevocable beneficiary, if the life insurance policy owner has irrevocably waived his or her right to, and cannot obtain, any cash surrender value the life insurance policy may generate.

(3) The burial fund exclusion must be reduced by the face value of life insurance policies owned by the individual or spouse; and amounts in an irrevocable trust or other irrevocable arrangement.

(4) Interest earned or appreciation on the value of any excluded burial funds is excluded if left to accumulate and become a part of the burial fund.

(5) If the member did not purchase his/her own prepaid burial, even if his/her money was used for the purchase, the member is not the "owner" and the prepaid burial funds cannot be considered a resource to him/her. However, if the member's money was used by another to purchase the prepaid burial, the rules on transfer of property must be applied since the purchaser (owner) could withdraw the funds any time.

(f) **Irrevocable burial contract.** Oklahoma law provides that a purchaser (buyer) of a prepaid funeral contract may elect to make the contract irrevocable. The irrevocability cannot become effective until 30 days after purchase. For an irrevocable contract to be valid, the election to make it irrevocable must be made by the purchaser (owner) or the purchaser's guardian or an individual with power of attorney for the purchaser (owner). In instances where the OKDHS Form 08MA084E, Management of Recipient's Funds, is on file in the nursing facility, the form serves as a power of attorney for the administrator to purchase and/or elect to make irrevocable the burial funds for the member. Verification of the member's countable income or resources held in bank accounts or at other financial institutions can be established through an AVS.

(1) ~~If the irrevocable election was made prior to July 1, 1986, and the member received assistance on July 1, 1986, the full amount of the~~The irrevocable contract ~~is not~~shall

not be considered a countable resource. ~~This exclusion applies only if the member does not add to the amount of the contract. Interest accrued on the contract is not considered as added by the member. Any break in assistance will require that the contract be evaluated at the time of reapplication according to rules in (2) of this subsection.~~

(2) ~~If the effective date for the irrevocable election or application for assistance is July 1, 1986, or later:~~ Effective October 1, 2015, the cash value of any life insurance policies and/or designated accounts shall be excluded as a resource up to a maximum of $1,500. This exclusion shall be reduced dollar for dollar by the face value amount of any irrevocable prepaid burial contract.

~~(A) the face value amount of an irrevocable burial contract cannot exceed $6,000 plus accrued interest through August 4, 1998.~~

~~(B) the face value amount of an irrevocable burial contract cannot exceed $7,500 plus accrued interest for the period August 5, 1998, through October 31, 2009.~~

~~(C) after November 1, 2009, state statute excludes the face value of an irrevocable burial contract, up to $10,000. This exclusion includes any combination of irrevocable contract, revocable prepaid account, designated account or cash value in life insurance policies not used to fund the burial policy, regardless of the face value, provided the cash value in policies and designated accounts does not exceed $1500. When the amount exceeds $10,000, the member is ineligible for assistance.Accrued interest is not counted as a part of the $10,000 limit regardless of when it is accrued.~~

~~(D) the face value of life insurance policies used to fund burial contracts is counted towards the $10,000 limit.~~

(g) **Medical insurance.** If a member is covered by insurance other than SoonerCare, then SoonerCare is the payer of last resort and should not be ~~bill~~billed until all other payers have paid. If payment is made directly to the member, the member must reimburse OHCA up to the amount paid by SoonerCare. Any amount remaining after payment to OHCA is considered as an available resource.

317:35-5-41.3. Automobiles, pickups, and trucks

Automobiles, pickups, and trucks are considered in the eligibility determination for SoonerCare benefits. Verification of the member's countable resources held in bank accounts or at other financial institutions can be established through an AVS.

(1) **Exempt automobiles.** One automobile is excluded from counting as a resource ~~to the extent its current market value (CMV) does not exceed $4,500. The CMV in excess of $4,500 is counted against the resource limit; or exempt one automobile, pickup or truck per family regardless of the value if it is verified that the car is used:~~

~~(A) for medical services 4 times a year to obtain either medical treatment or prescription drugs; or~~

~~(B) for employment purposes; or~~

~~(C) especially equipped for operation by or transportation of a handicapped person~~.

(2) **Other automobiles.** The equity in other automobiles, pickups, and trucks is considered as a countable resource. The current market value, less encumbrances on the vehicle, is the equity. Only encumbrances that can be verified are considered in computing equity.

(A) The market value of each year's make and model is established on the basis of the "Avg. Trade In" value as shown in the current publication of the National Automobile Dealers Association (NADA) on "Cars, Trucks, and Imports".

(B) If a vehicle's listing has been discontinued in the NADA book, the household's estimate of the value of the vehicle is accepted unless the worker has reason to believe the estimate is incorrect.

(C) The market value of a vehicle no longer operable is the verified salvage value.

(D) In the event the member and worker cannot agree on the value of the vehicle, the member secures written appraisal by two persons who are familiar with current values. If there is substantial unexplained divergence between these appraisals or between the book value and one or more of these appraisals, the worker and the member jointly arrange for the market value to be established by an appraisal made by a third person who is familiar with current values and who is acceptable to both the member and the worker.

317:35-5-42. Determination of countable income for individuals categorically related to aged, blind and disabled

(a) **General.** The term income is defined as that gross gain or gross recurrent benefit which is derived from labor, business, property, retirement and other benefits, and many other forms which can be counted on as currently available for use on a regular basis. When an individual's income is reduced due to recoupment of an overpayment or garnishment, the gross amount before the recoupment or garnishment is counted as income. Verification of the member's countable income or resources held in bank accounts or at other financial institutions can be established through an AVS.

(1) If it appears the applicant or SoonerCare member is eligible for any type of income (excluding SSI) or resources, he/she must be notified in writing by the Agency of his/her potential eligibility. The notice must contain the information that failure to file for and take all appropriate steps to obtain such benefit within 30 days from the date of the notice will result in a determination of ineligibility.

(2) If a husband and wife are living in their own home, the couple's total income and/or resource is divided equally between the two cases. If they both enter a nursing facility, their income and resources are considered separately.

(3) If only one spouse in a couple is eligible and the couple ceases to live together, only the income and resources of the ineligible spouse that are actually contributed to the eligible spouse beginning with the month

after the month which they ceased to live together are considered.

(4) In calculating monthly income, cents are included in the computation until the monthly amount of each individual's source of income has been established. When the monthly amount of each income source has been established, cents are rounded to the nearest dollar (1 - 49 cents is rounded down, and 50 - 99 cents is rounded up). For example, an individual's weekly earnings of $99.90 are multiplied by 4.3 and the cents rounded to the nearest dollar ($99.90 x 4.3 = $429.57 rounds to $430). See rounding procedures in OAC 340:65-3-4 when using BENDEX to verify OASDI benefits.

(b) **Income disregards.** In determining need, the following are not considered as income:

(1) ~~The coupon allotment under the Food Stamp Act of 1977~~The value of Supplemental Nutrition Assistance Program (food stamps) received;

(2) Any payment received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(3) Educational grants (excluding work study), scholarships, etc., that are contingent upon the student regularly attending school. The student's classification (graduate or undergraduate) is not a factor;

(4) Loans(regardless of use) if a bona fide debt or obligation to pay can be established. Criteria to establish a loan as bona fide includes:

(A) An acknowledgment of obligation to repay or evidence that the loan was from an individual or financial institution in the loan business. If the loan agreement is not written, an OKDHS Form 08AD103E, Loan Verification, should be completed by the borrower attesting that the loan is bona fide and signed by the lender verifying the date and amount of loan. When copies of written agreements or OKDHS Form 08AD103E are not available, detailed case documentation must include information that the loan is bona fide and how the debt amount and date of receipt was verified.

(B) If the loan was from a person(s) not in the loan business, the borrower's acknowledgment of obligation to repay (with or without interest) and the lender's verification of the loan are required to indicate that the loan is bona fide.

(C) Proceeds of a loan secured by an exempt asset are not an asset;

(5) One-third of child support payments received on behalf of the disabled minor child;

(6) Indian payments (including judgment funds or funds held in trust) distributed by the Secretary of the Interior (BIA) or distributed by the tribe subject to approval by the Secretary of the Interior. Also, any interest or investment income accrued on such funds while held in trust or any purchases made with judgment funds, trust funds, interest or investment income accrued on such funds. Any income from mineral leases, from tribal business investments, etc. However, any interest or income derived from the principal or produced by purchases made with funds after distribution is considered as any other income;

(7) Special allowance for school expenses made available upon petition (in writing) for funds held in trust for the student;

(8) Title III benefits from State and Community Programs on Aging;

(9) Payment for supportive services or reimbursement of out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in the Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE);

(10) Payments to volunteers under the Domestic Volunteer Services Act of 1973 (VISTA), unless the gross amount of VISTA payments equals or exceeds the state or federal minimum wage, whichever is greater;

(11) The value of supplemental food assistance received under the Child Nutrition Act or the special food service program for children under the national School Lunch Act;

(12) Any portion of payments made under the Alaska Native Claims Settlement Act to an Alaska Native which are exempt from taxation under the Settlement Act;

(13) Reimbursements from an employer for out-of-pocket expenditures and allowances for travel or training to the extent the funds are used for expenses directly related to such travel or training and uniform allowance if the uniform is uniquely identified with company names or logo;

(14) Assistance or services from the Vocational Rehabilitation program such as transportation expenses to a rehabilitation center, extra clothing, lunches, grooming needed for a training program and any other such complementary payments;

(15) Experimental Housing Allowance Program (EHAP) payments made under Annual Contributions Contracts entered into prior to January 1, 1975, under Section 23 of the U.S. Housing Act of 1937, as amended;

(16) Payments made by a public or private non-profit child care agency for a child placed in foster care or subsidized adoption;

(17) Governmental rental or housing subsidies by governmental agencies, e.g., HUD (received in-kind or in cash) for rent, mortgage payments, or utilities;

(18) LIHEAP payments for energy assistance and payments for emergency situations under Emergency Assistance to Needy Families with Children;

(19) Payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.);

(20) Payments made from the Radiation Exposure Compensation Trust Fund as compensation for injuries or deaths resulting from the exposure to radiation from nuclear testing and uranium mining;

(21) Federal major disaster and emergency assistance provided under the Disaster Relief Act of 1974, and

comparable disaster assistance provided by States, local governments, and disaster assistance organizations;

(22) Income of a sponsor to the sponsored eligible alien;

(23) Income that is set aside under an approved Plan for Achieving Self-Support for Blind or Disabled People (PASS). The Social Security Administration approves the plan, the amount of income excluded and the period of time approved. A plan can be approved for an initial period of 18 months. The plan may be extended for an additional 18 months if needed, and an additional 12 months (total 48 months) when the objective involves a lengthy educational or training program;

(24) Payments made to individuals because of their status as victims of Nazi persecution (PL 103-286);

(25) Payments received under the Civil Liberties Act of 1988. These payments are to be made to individuals of Japanese ancestry who were detained in internment camps during World War II;

(26) Payments received as a result of participation in a class action lawsuit entitled "Factor VIII or IX Concentrate Blood Products Litigation". These payments are made to hemophilia patients who are infected with HIV. However, if the payments are placed in an interest-bearing account, or some other investment medium that produces income, the income generated by the account may be countable as income to the individual;

(27) Payments made to certain Vietnam veterans' children with spina bifida (PL 104-204);

(28) Payments made to certain Korea service veterans' children with spina bifida (PL 108-183);

(29) Payments made to the children of women Vietnam veterans who suffer from certain birth defects (PL 106-419);

(30) Additional payments of regular unemployment compensation in the amount of $25 per week ending June 30, 2010, and any amount of emergency unemployment compensation paid through May 31, 2010, as authorized under the American Recovery and Reinvestment Tax Act of 2009; ~~and~~

(31) Wages paid by the Census Bureau for temporary employment related to Census activities~~.~~;

(32) Income tax refunds;

(33) Home energy assistance;

(34) Food or shelter based on need provided by non-profit agencies;

(35) Money someone else spends to pay your expenses for items other than food or shelter (e.g., someone pays for your telephone or medical bills);

(36) Earnings up to $1,750 per month to a maximum of $7,060 per year (effective January 2014) for a student under age 22;

(37) The cost of impairment-related work expenses for items or services that a disabled person needs in order to work; and

(38) The first $2,000 of compensation received per calendar year for participating in certain clinical trials;

(c) **Determination of income.** The member is responsible for reporting information regarding all sources of available income. This information is verified and used by the worker in determining eligibility.

(1) Gross income is listed for purposes of determining eligibility. It may be derived from many sources, and some items may be automatically disregarded by the computer when so provided by state or federal law.

(2) If a member is determined to be categorically needy and is also an SSI recipient, any change in countable income (see OAC 317:35-5-42(d)(3) to determine countable income) will not affect receipt of SoonerCare and amount of State Supplemental Payment (SSP) as long as the amount does not cause SSI ineligibility. Income which will be considered by SSI in the retrospective cycle is documented in the case with computer update at the time that SSI makes the change (in order not to penalize the member twice). If the SSI change is not timely, the worker updates the computer using the appropriate date as if it had been timely. If the receipt of the income causes SSI ineligibility, the income is considered immediately with proper action taken to reduce or close the SoonerCare benefit and SSP case. Any SSI overpayment caused by SSA not making timely changes will result in recovery by SSI in the future. When the worker becomes aware of income changes which will affect SSI eligibility or payment amount, the information is to be shared with the SSA office.

(3) Some of the more common income sources to be considered in determining eligibility are as follows:

(A) **Retirement and disability benefits.** These include but are not limited to OASDI, VA, Railroad Retirement, SSI, and unemployment benefits. Federal and State benefits are considered for the month they are intended when determining eligibility.

(i) Verifying and documenting the receipt of the benefit and the current benefit amount are achieved by:

(I) seeing the member's award letter or warrant;

(II) obtaining a signed statement from the individual who cashed the warrant; or

(III) by using BENDEX and SDX.

(ii) Determination of OASDI benefits to be considered (disregarding COLA's) for former State Supplemental recipients who are reapplying for medical benefits under the Pickle Amendment must be computed according to OKDHS Form 08AX011E.

(iii) The Veterans Administration allows their recipients the opportunity to request a reimbursement for medical expenses not covered by SoonerCare. If a recipient is eligible for the readjustment payment, it is paid in a lump sum for the entire past year. This reimbursement is disregarded as income and a resource in the month it is received; however, any amount retained in the month following receipt is considered a resource.

(iv) Government financial assistance in the form of VA Aid and Attendance or Champus payments is considered as follows:

(I) **Nursing facility care.** VA Aid and Attendance or Champus payment whether paid directly to the member or to the facility, are considered as third party resources and do not affect the income eligibility or the vendor payment of the member.

(II) **Own home care.** The actual amount of VA Aid and Attendance payment paid for an attendant in the home is disregarded as income. In all instances, the amount of VA Aid and Attendance is shown on the computer form.

(v) Veterans or their surviving spouse who receive a VA pension may have their pension reduced to $90 by the VA if the veteran does not have dependents, is SoonerCare eligible, and is residing in a nursing facility that is approved under SoonerCare. Section 8003 of Public Law 101-508 allows these veterans' pensions to be reduced to $90 per month. None of the $90 may be used in computing any vendor payment or spenddown. In these instances, the nursing home resident is entitled to the $90 reduced VA pension as well as the regular nursing facility maintenance standard. Any vendor payment or spenddown will be computed by using other income minus the monthly nursing facility maintenance standard minus any applicable medical deduction(s). Veterans or their surviving spouse who meet these conditions will have their VA benefits reduced the month following the month of admission to a SoonerCare approved nursing facility.

(B) **SSI benefits.** SSI benefits may be continued up to three months for a recipient who enters a public medical or psychiatric institution, a SoonerCare approved hospital, extended care facility, intermediate care facility for the mentally retarded or nursing facility. To be eligible for the continuation of benefits, the SSI recipient must have a physician's certification that the institutionalization is not expected to exceed three months and there must be a need to maintain and provide expenses for the home. These continued payments are intended for the use of the recipient and do not affect the vendor payment.

(C) **Lump sum payments.**

(i) Any income received in a lump sum (with the exception of SSI lump sum) covering a period of more than one month, whether received on a recurring or nonrecurring basis, is considered as income in the month it is received. Any amount from any lump sum source, including SSI (with the exception of dedicated bank accounts for disabled/blind children under age 18), retained on the first day of the next month is considered as a resource. Such lump sum payments may include, but are not limited to, accumulation of wages, retroactive OASDI, VA benefits, Workers' Compensation, bonus lease payments and annual rentals from land and/or minerals.

(ii) Lump sum payments used to establish dedicated bank accounts by representative payees in order to receive and maintain retroactive SSI benefits for disabled/blind children under age 18 are excluded as income. The interest income generated from dedicated bank accounts is also excluded. The dedicated bank account consisting of the retroactive SSI lump sum payment and accumulated interest is excluded as a resource in both the month received and any subsequent months.

(iii) A life insurance death benefit received by an individual while living is considered as income in the month received and as a resource in the following months to the extent it is available.

(iv) Changing a resource from one form to another, such as converting personal property to cash, is not considered a lump sum payment.

(D) **Income from capital resources and rental property.** Income from capital resources can be derived from rental of a house, rental from land (cash or crop rent), leasing of minerals, life estate, homestead rights, or interest.

(i) If royalty income is received monthly but in irregular amounts, an average based on the previous six months' royalty income is computed and used to determine income eligibility. When the difference between the gross and net income represents a production or severance tax (e.g., most oil royalties are reduced by this tax), the OHCA only uses the net figure when determining income eligibility. The production or severance tax is the cost of producing the income, and, therefore, is deducted from the gross income. Exception: At any time that the county becomes aware of and can establish a trend showing a dramatic increase or decrease in royalty income, the previous two ~~month's~~months' royalty income is averaged to compute countable monthly income.

(ii) Rental income may be treated as earned income when the individual participates in the management of a trade or business or invests his/her own labor in producing the income. The individual's federal income tax return will verify whether or not the income is from self-employment. Otherwise, income received from ~~rent~~rental property is treated as unearned income.

(iii) When ~~property rental~~rental property is handled by a leasing agent who collects the rent and deducts a management fee, only the rent actually received by the member is considered as income.

(E) **Earned income/self-employment.** The term "earned income" includes income in cash earned by an individual through the receipt of wages, salary,

commission, or profit from activities in which he/she is engaged as a self-employed individual or as an employee. See subparagraph (G) of this paragraph for earnings received in fluctuating amounts. "Earned Income" is also defined to include in-kind benefits received by an employee from an employer in lieu of wages or in conjunction with wages. Such benefits received in-kind are considered as earned income only when the employee/employer relationship has been established. The cash value of the in-kind benefits must be verified by the employer. Income from self-employment also includes in-kind benefits for a work activity or service for which the self-employed person ordinarily receives payment in his/her business enterprise. An exchange of labor or services~~;~~, e.g., barter, is considered as an in-kind benefit. Medical insurance secured through the employer, whether purchased or as a benefit, is not considered in-kind but is recorded on the case computer input document for coordination with SoonerCare benefits.

(i) Work study received by an individual who is attending school is considered as earned income with appropriate earned income disregards applied.

(ii) Money from the sale of whole blood or blood plasma is considered as self-employment income subject to necessary business ~~expense~~expenses and appropriate earned income disregards.

(iii) Self-employment income is determined as follows:

(I) Generally, the federal or state income tax form for the most recent year is used for calculating the self-employment income to project income on a monthly basis for the certification period. The gross income amount, as well as the allowable deductions, are the same as can be claimed under the Internal Revenue code for tax purposes.

(II) Self-employment income which represents a household's annual support is prorated over a 12- month period, even if the income is received in a short period of time. For example, self-employment income received by crop farmers is averaged over a 12-month period if the income represents the farmer's annual support.

(III) If the household's self-employment enterprise has been in existence for less than a year, the income from that self-employment enterprise is averaged over the period of time the business has been in operation to establish the monthly income amount.

(IV) If a tax return is not available because one has not been filed due to recent establishment of the self-employment enterprise, a profit and loss statement must be seen to establish the monthly income amount.

(V) The purchase price and/or payment(s) on the principal of loans for capital assets, equipment, machinery, and other durable goods is not considered as a cost of producing self-employed income. Also not considered are net losses from previous periods, depreciation of capital assets, equipment, machinery, and other durable goods; and federal, state and local income taxes, FICA, money set aside for retirement purposes, and other work related personal expenses, such as meals and necessary transportation (these expenses are accounted for by the work related expense deduction given in OAC 340:10-3-33(1)).

(iv) Countable self-employment income is determined by deducting allowable business expenses to determine the adjusted gross income. The earned income deductions are then applied to establish countable earned income.

(F) **~~Inconsequential~~Infrequent or irregular income.** ~~Inconsequential or irregular receipt of income in the amount of $10 or less per month or $30 or less per quarter is disregarded. The disregard is applied per individual for each type of inconsequential or irregular income. To determine whether the income is inconsequential or irregular, the gross amount of earned income and the gross minus business expense of self-employed income are considered.~~

(i) Income is considered to be infrequent if the individual receives it only once during a calendar quarter from a single source and the individual did not receive that type of income in the month preceding or following the month the income was received.

(ii) Income is considered to be irregular if the individual cannot reasonably expect to receive it.

(iii) OHCA excludes the following amount of infrequent or irregular income:

(I) the first $30 per calendar quarter of earned income; and

(II) the first $60 per calendar quarter of unearned income.

(iv) Infrequent or irregular income, whether earned or unearned, that exceeds these amounts is considered countable income in the month it is received.

(G) **Monthly income received in fluctuating amounts.** Income which is received monthly but in irregular amounts is averaged using two ~~month's~~months' income, if possible, to determine income eligibility. Less than two ~~month's~~months' income may be used when circumstances (e.g., new employment, unpaid sick leave, etc.) would indicate that previous income amounts would not be appropriate to use in determining future income amounts. Income received more often than monthly is converted to monthly amounts as follows:

(i) **Daily.** Income received on a daily basis is converted to a weekly amount then multiplied by 4.3.

(ii) **Weekly.** Income received weekly is multiplied by 4.3.

(iii) **Twice a month.** Income received twice a month is multiplied by 2.

(iv) **Biweekly.** Income received every two weeks is multiplied by 2.15.

(H) **Non-negotiable notes and mortgages.** Installment payments received on a note, mortgage, etc., are considered as monthly income.

(I) **Income from the Job Training and Partnership Act (JTPA).** Unearned income received by an adult, such as a needs based payment, cash assistance, compensation in lieu of wages, allowances, etc., from a program funded by JTPA is considered as any other unearned income. JTPA earned income received as wages is considered as any other earned income.

(J) **Other income.** Any other monies or payments which are available for current living expenses must be considered.

(d) **Computation of income.**

(1) **Earned income or unearned income.** The general income exclusion of $20 per month is allowed for earned or unearned income, unless the unearned income is SSP, on the combined ~~earned~~ income of the eligible individual and eligible or ineligible spouse. See paragraph ~~(6)~~(5) of this subsection if there are ineligible minor children. After the $20 exclusion, deduct $65 and one-half of the remaining combined earned income. The total gross amount of unearned income of the eligible individual and eligible or ineligible spouse is considered.

~~(2) **Unearned income.** The total gross amount of unearned income of the eligible individual and eligible or ineligible spouse is considered. See paragraph (6) of this subsection if there are ineligible minor children.~~

(~~3~~2) **Countable income.** The countable income is the sum of the earned income ~~after exclusions~~ and the total gross unearned income after exclusions.

(~~4~~3) **Deeming computation for disabled or blind minor child(ren).** An automated calculation is available for computing the income amount to be deemed from parent(s) and the spouse of the parent to eligible disabled or blind minor child(ren) by use of transaction CID. The ineligible minor child in the computation regarding allocation for ineligible child(ren) is defined as: a dependent child under age 18.

(A) ~~A~~An intellectually disabled child living in the home who is ineligible for SSP due to the deeming process may be approved for SoonerCare under the Home and Community Based Services Waiver (HCBS) Program as outlined in OAC 317:35-9-5.

(B) For TEFRA, the income of child's parent(s) is not deemed to him/her.

(~~5~~4) **Premature infants.** Premature infants (i.e., 37 weeks or less) whose birth weight is less than 1200 grams (approximately 2 pounds 10 ounces) will be considered disabled by SSA even if no other medical impairment(s) exist. In this event, the parents' income is not deemed to the child until the month following the month in which the child leaves the hospital and begins living with his/her parents.

(~~6~~5) **Procedures for deducting ineligible minor child allocation.** When an eligible individual has an ineligible spouse and ineligible minor children (not receiving TANF), the computation is as follows:

(A) Each ineligible child's allocation (OKDHS Form 08AX001E, Schedule VII. C.) minus each child's gross countable income is deducted from the ineligible spouse's income. Deeming of income is not done from child to parent.

(B) The deduction in subparagraph (A) of this paragraph is prior to deduction of the general income exclusion and work expense.

(C) After computations in subparagraphs (A) and (B) of this paragraph, the remaining amount is the ineligible spouse's countable income considered available to the eligible spouse.

(~~7~~6) **Special exclusions for blind individuals.** Any blind individual who is employed may deduct the general income exclusion and the work exclusion from the gross amount of earned income. After the application of these exclusions, one-half of the remaining income is excluded. The actual work expense is then deducted from the remaining half to arrive at the amount of countable income. If this blind individual has a spouse who is also eligible due to blindness and both are working, the amount of ordinary and necessary expenses attributable to the earning of income for each of the blind individuals may be deducted. Expenses are deductible as paid but may not exceed the amount of earned income. To be deductible, an expense need not relate directly to the blindness of the individual, it need only be an ordinary and necessary work expense of the blind individual. Such expenses fall into three broad categories:

(A) transportation to and from work;

(B) job performance; and

(C) job improvement.

[OAR Docket #15-509; filed 6-12-15]

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

[OAR Docket #15-513]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 6. SoonerCare for Pregnant Women and Families with Children

Part 5. Determination of Eligibility for SoonerCare Health Benefits for Pregnant Women and Families with Children

317:35-6-38 [NEW]
(Reference APA WF # 14-20)
AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 435.1100-1110
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
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June 8, 2015
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August 27, 2015
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The OHCA is establishing the rules for the Hospital Presumptive Eligibility (HPE) program. HPE gives qualified hospitals that participate in their state's Medicaid program the opportunity to determine presumptive eligibility (PE) for certain Medicaid-eligible populations.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 6. SOONERCARE FOR PREGNANT WOMEN AND FAMILIES WITH CHILDREN

PART 5. DETERMINATION OF ELIGIBILITY FOR SOONERCARE HEALTH BENEFITS FOR PREGNANT WOMEN AND FAMILIES WITH CHILDREN

317:35-6-38. Hospital Presumptive Eligibility

(a) **General.** Hospital Presumptive Eligibility (HPE) is a limited period of SoonerCare eligibility for individuals who are categorically related to certain MAGI eligibility groups listed in OAC 317:35-6-38(a)(1)(A)(i) through (vi) and are also determined by a qualified hospital (see OAC 317:35-6-38(a)(2)(A) through (L)) for the conditions of a qualified hospital), on the basis of preliminary information provided by the applicant on a completed HPE application, to be eligible for SoonerCare services. The rules in this section apply only to those individuals applying for, or qualified hospitals determining eligibility under, the HPE program.

(1) **Individuals eligible to participate in the HPE program.** To be eligible to participate in the HPE program, an individual must be categorically related to a MAGI eligibility group (see OAC 317:35-5-2 for categorical relationship criteria) and also meet the income standard and non-medical eligibility specified in this section.

(A) **MAGI Eligibility Groups.** The following MAGI eligibility groups are eligible to have a presumptive eligibility (PE) determination made by a qualified hospital participating in the HPE program:

(i) children;
(ii) pregnant women;
(iii) parents and caretaker relatives;
(iv) former foster care children;
(v) Breast and Cervical Cancer Treatment program; and
(vi) SoonerPlan Family planning.

(B) **Income standard.** The income that is counted in determining PE for an individual is that individual's household income. The income limit for the MAGI eligibility groups covered under the HPE program is the same as defined in OAC 317:35-6-39(b)(8) and is listed on the HPE application. The calculation of countable household income for an individual covered under the HPE program is the same as OAC 317:35-6-39, except that, in determining the individual's household composition, only the MAGI household composition non-filer rules listed under OAC 317:35-6-43 apply for all individuals applying for the HPE program regardless of whether or not the individual is a tax filer, plans on filing taxes, or is a tax dependent.

(C) **Non-medical eligibility requirements.** Individuals covered under the HPE program must also meet the non-medical eligibility requirements described in OAC 317:35-5-25.

(D) **Pregnant women covered under the HPE program.** Coverage for pregnant women who are covered under the HPE program is limited to ambulatory prenatal care only, and the number of PE periods that may be authorized for pregnant women is one per pregnancy. Pregnant women who may be covered for the benefit of the unborn child(ren) under Title XXI are not eligible for the HPE program.

(E) **Other individuals covered under the HPE program.** Coverage for other individuals listed under OAC 317:35-6-38(a)(1)(A)(i) through (vi) who are covered under the HPE program, except for pregnant women, is the same as covered under the State Plan. The number of PE periods that may be authorized is one period every 365 days beginning on the date the individual is enrolled in HPE.

(2) **Qualified hospital.** The decision that a hospital is qualified to make PE determinations is made by the OHCA. In order to participate in the HPE program and make PE determinations, a qualified hospital must:

(A) Meet all the conditions of an eligible provider under OAC 317:30-5-40;

(B) Elect to participate in the HPE program by:

(i) Completing and submitting a HPE Statement of Intent and Memorandum of Understanding to the OHCA and agreeing to all the terms and conditions of the HPE program;

(ii) Amending its current contract with the OHCA to include participation in the HPE program;

(C) Assign and designate a hospital employee to serve as the HPE program administrator and point of contact;

(D) Assign and designate hospital employees to make PE determinations. The term Authorized Hospital Employee(s) (AHE) means all individuals making PE determinations on behalf of a hospital participating in the HPE program. The AHE must meet the following conditions:

(i) Be an employee of the hospital (i.e. the AHE may not be a third party contractor);

(ii) Attend, complete, and pass the HPE program training course provided and assessed by the OHCA;

(iii) The AHE certificate of HPE course completion must be kept in the worker's file at the hospital and must be made available to the OHCA upon request;

(iv) Follow state and federal privacy and security requirements regarding patient confidentiality;

(v) Agree to abide by all the rules and guidelines of the HPE program established by the OHCA under this section.

(E) Notify the OHCA of any changes in the AHE's employment status or in the designation of that individual as the hospital's AHE;

(F) Abide by the rules and regulations of the Uniform Electronic Transaction Act as outlined in OAC 317:30-3-4.1;

(G) Keep internal records of all individuals for whom a PE determination was made and make those records available to the OHCA upon request;

(H) Agree to submit all completed HPE applications and PE determinations to the OHCA within 5 days of the PE determination;

(I) Notify the applicant in writing, or in cases where the HPE application was made on behalf of a child, notify the child's parent or caretaker of the PE determination outcome and provide and explain to eligible members the "HPE Program Policy and Enrollment" form;

(J) Assist HPE applicants with the completion of a full SoonerCare application within 15 days of the HPE application submission to the OHCA;

(K) Agree to adhere to the processes and procedures established by the OHCA regarding the operation and oversight of the HPE program; and

(L) Cooperate with the OHCA regarding audit and quality control reviews on PE determinations the hospital makes. The agency may terminate the HPE agreement with the hospital if the hospital does not meet the standards and quality requirements set by the OHCA.

(3) **Limited hospital PE determinations.** The agency limits the PE determinations that a hospital may make to only those eligibility groups described in OAC 317:35-6-38(a)(1)(A) using the MAGI methodology rules established for the HPE program. Additionally, PE determinations made for individuals categorically related to the Breast and Cervical Cancer Treatment program are limited to qualified hospitals that are also qualified entities through the NBCCEDP.

(b) **General provisions of the HPE program.** The agency provides SoonerCare coverage to eligible individuals covered during a period of PE.

(1) **PE period.** The PE period begins on the date a qualified hospital determines an individual to be eligible under the HPE program. A qualified hospital has 5 days to notify the agency of its PE determination. The PE period ends with the earlier of:

(A) The day the agency receives the SoonerCare application form as described in OAC 317:35-5-60 and an eligibility determination is made by the agency; or

(B) If a SoonerCare application is not received, the last day of the month following the month in which the PE determination was made.

(2) **Agency approval of PE.** When the OHCA receives a timely and completed HPE application, a case number and, if needed, SoonerCare member ID is assigned to the member by the agency. Qualified hospitals will be able to review member enrollment and eligibility, once those members have been entered into the system by the OHCA, for claims billing and member eligibility verification.

(3) **Incomplete HPE applications.** Upon receiving a HPE Application, the OHCA reviews it for completeness and correctness. The HPE application is considered incomplete if it is not filled out in its entirety (e.g., the applicant's first or last name is not provided on the application) or if the application is not filed timely with the OHCA. When the HPE application is determined to be incomplete, the HPE application is returned to the AHE or the HPE program administrator at the qualified hospital to correct the application errors or amend the HPE application. To maintain the original PE certification period, the qualified hospital must return the completed or corrected HPE application to the agency within five working days.

(4) **Applicant appeal.** The HPE applicant cannot appeal the PE determination made by a qualified hospital or the expiration date of the PE period.

(5) **Applicant ineligibility.** Applicants ineligible for the HPE program are individuals who do not meet the HPE criteria, individuals who have previously been enrolled in the HPE program within the last 365 days, and individuals currently enrolled in SoonerCare. Individuals

currently enrolled in SoonerPlan Family Planning are not eligible for HPE family planning services, but may be eligible for other programs under HPE. When the OHCA receives a HPE application from a qualified hospital for an ineligible applicant (e.g., the applicant has been previously enrolled in the HPE program within the last 365 days), the OHCA will disenroll the individual from the HPE program immediately and notify the hospital of the error. The hospital will be responsible for following up with that individual to notify them of their disenrollment from the HPE program. If the applicant is not currently enrolled into SoonerCare, the applicant may submit a full SoonerCare application and receive a full eligibility determination by the OHCA. HPE services provided to ineligible applicants, other than persons currently enrolled into SoonerCare or SoonerPlan Family Planning, may not be eligible for reimbursement by the OHCA.

[OAR Docket #15-513; filed 6-12-15]

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

[OAR Docket #15-523]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 6. SoonerCare for Pregnant Women and Families with Children
Part 7. Certification, Redetermination and Notification
317:35-6-62.1 [NEW]
(Reference APA WF # 14-44)
AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 435.918
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n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
OHCA allows electronic notices to be sent to SoonerCare members' designated email addresses.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 6. SOONERCARE FOR PREGNANT WOMEN AND FAMILIES WITH CHILDREN

PART 7. CERTIFICATION, REDETERMINATION AND NOTIFICATION

317:35-6-62.1. Electronic notices

(a) The agency allows SoonerCare members the choice to receive SoonerCare notices and information through electronic formats.

(1) SoonerCare members who elect to receive electronic notices will have this election confirmed by regular mail.

(2) SoonerCare members will be able to change this election by regular mail, telephone, or through the SoonerCare application.

(b) The agency will ensure all notices it generates will be posted to the member's individual account within one business day.

(1) The agency will send an email or other electronic communication alerting SoonerCare members that a notice has been posted to their member account.

(2) The agency will not include the member's confidential information in the email or electronic communication alert.

(3) The agency will send a notice by mail within three business days of a failed email or electronic alert that was undeliverable to the member.

(4) At the member's request, all notices that are posted to the member's account may also be provided through mail.

(c) Electronic notices that are posted to the member's account which require the member to take certain action, submit additional documentation, or contain eligibility, appeal, or SoonerCare benefits information are considered the same as if the notice was sent by mail to the member.

[OAR Docket #15-523; filed 6-12-15]

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

[OAR Docket #15-510]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 15. Personal Care Services
317:35-15-1 [AMENDED]
317:35-15-2 [AMENDED]
317:35-15-3 [AMENDED]
317:35-15-4 [AMENDED]
317:35-15-7 [AMENDED]
317:35-15-8 [AMENDED]
317:35-15-8.1 [AMENDED]
317:35-15-9 [AMENDED]
317:35-15-10 [AMENDED]
317:35-15-13.1 [AMENDED]
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SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Rules for the State Plan Personal Care services are amended to match current processes and procedures that are currently in place at OKDHS.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 15. PERSONAL CARE SERVICES

317:35-15-1. Overview of long-term medical care services; relationship to QMBP, SLMB, and other SoonerCare service eligibility

Long-term medical care for the categorically needy includes care in a nursing facility (refer to OAC 317:35-19), public and private intermediate care facility for ~~the mentally retarded~~individuals with intellectual disabilities (refer to OAC 317:35-9), persons age 65 years or older in mental health hospitals (refer to OAC 317:35-9), Home and Community Based Waiver Services for the Intellectually Disabled (refer to OAC 317:35-9), Home and Community Based Waiver Services for the ADvantage program (refer to OAC 317:35-17), and Personal Care services (refer to this subchapter). Personal Care provides services in the member's own home. Any time an individual is certified as eligible for SoonerCare coverage of long-term care, the individual is also eligible for other SoonerCare services. Another application is not required. Any time an aged, blind, or disabled individual is determined eligible for long-term care, a separate determination must be made to see if eligibility conditions as a Qualified Medicare Beneficiary ~~(QMB)~~Plus (QMBP) or Specified Low-Income Medicare Beneficiary (SLMB) are met. Another application for ~~QMB~~QMBP or SLMB benefits is not required.

317:35-15-2. Personal Care services

(a) Personal Care is assistance to an individual in carrying out activities of daily living~~, such as bathing, grooming and toileting,~~ or in carrying out instrumental activities of daily living~~, such as preparing meals and doing laundry or errands~~ directly related to the member's personal care needs~~, to assure personal health and safety of the individual or~~ to prevent or minimize physical health regression or deterioration. The Personal Care service requires a skilled nursing assessment of need, development of a care plan to meet identified personal care needs, care plan oversight and periodic re-assessment and updating, if necessary, of the care plan. Personal Care services do not include technical services such as~~,~~ tracheal suctioning, bladder catheterization, colostomy irrigation, ~~and~~or the operation of equipment of a technical nature such as a patient lift.

(b) ~~Personal Care services support informal care being provided in the member's home. A rented apartment, room or shelter shared with others is considered "the member's home". A facility which meets the definition of a nursing facility, room and board, licensed residential care facility, group home, rest home or a specialized home as set forth in O.S. Title 63, Section 1-819 et seq., Section 1-899.1 et seq., and Section 1-1902 et seq., and/or in any other typed of settings prohibited under applicable federal or state statutes, rules, regulations, or other written instruments that have the effect of law is not considered the "the member's home" for delivery of SoonerCare Personal Care Program services.~~Personal Care members may receive services in limited types of living arrangements. The specific living arrangements are set forth below.

(1) Personal Care members are not eligible to receive services while residing in an institutional setting including, but not limited to, licensed facilities, such as a hospital, nursing facility, licensed residential care facility or licensed assisted living facility, or in an unlicensed institutional living arrangement, such as a room and board home or facility.

(2) Additional living arrangements in which members may receive Personal Care services are the member's own home, apartment, or a family or friend's home or apartment. A home or apartment unit is defined as a self-contained living space having a lockable entrance to the unit including a bathroom and food storage/preparation amenities in addition to bedroom/living space.

(3) For Personal Care members who are full-time students, a dormitory room qualifies as an allowable living

arrangement in which to receive Personal Care services for the period during which the member is a student.

(4) With prior approval of the OKDHS area nurse, Personal Care services may be provided in an educational or employment setting to assist the member in achieving vocational goals identified in the care plan.

(c) Personal Care services may be provided by an individual employed by the member referred to as ~~a~~anIndividual Personal Care Assistant ~~(PCA)~~(IPCA) or by a ~~qualified employee of a~~Personal Care Assistant (PCA) employed by a home care agency that is certified to provide Personal Care services and contracted with the OHCA to provide Personal Care services. OKDHS must determine ~~a PCA~~an IPCA to be qualified to provide Personal Care services before they can provide services. Persons eligible to serve as either IPCAs or PCAS must meet the following criteria:

(1) are at least 18 years of age;

(2) have no pending notation related to abuse, neglect, or exploitation as reported by the Oklahoma State Department of Health Nurse Aide Registry;

(3) are not included in the OKDHS Community Services Worker Registry;

(4) have not been convicted of a crime or have any criminal background history or registry listings that prohibit employment as defined in O.S. Title 63, Section 1-1950.1;

(5) demonstrate the ability to understand and carry out assigned tasks;

(6) are not a legally responsible family member, such as a spouse, legal guardian, or parent of a minor child of the member being served (exceptions may be made for a legal guardian to provide services only with prior approval from the OKDHS Aging Services Division);

(7) have a verifiable work history and/or personal references, verifiable identification; and

(8) meet any additional requirements as outlined in the contract and certification requirements with the OHCA.

(d) Eligibility for Personal Care is contingent on an individual requiring one or more of the services offered at least monthly that include personal care, meal preparation, housekeeping, laundry, shopping or errands, or specified special tasks to meet Activities of Daily Living or Instrumental Activities of Daily Living assessed needs.

317:35-15-3. Application for Personal Care

(a) **Requests for Personal Care.** A request for Personal Care is made to the local OKDHS office or ADvantage Administration (AA). A written financial application is not required for an individual who has an active SoonerCare case. A financial application for Personal Care ~~consists of the Medical Assistance Application form~~is initiated when there is no active SoonerCare case. The ~~form~~application is signed by the applicant, parent, spouse, guardian or someone else acting on the applicant's behalf. All conditions of financial eligibility must be verified and documented in the case record. When current information already available in the local office establishes eligibility, the information may be used by recording source and date of information. If the applicant also wishes to apply for a State Supplemental Payment, either the applicant or his/her guardian must sign the application form.

(b) **Date of application.**

(1) The date of application is:

(A) the date the applicant or someone acting on his/her behalf signs the application in the county office;

(B) the date the application is stamped into the county office when the application is initiated outside the county office; or~~,~~

(C) the date when the request for SoonerCare is made orally and the financial application form is signed later.

(2) An exception to paragraph (1) of this subsection would occur when OKDHS has contracts with certain providers to take applications and obtain documentation. After the documentation is obtained, the contract provider forwards the application and documentation to the OKDHS county office of the applicant's county of residence for SoonerCare eligibility determination. The application date is the date the applicant signed the application form for the provider.

(c) **Eligibility status.** Financial and medical eligibility must be established before services can be initiated.

317:35-15-4. Determination of medical eligibility for Personal Care

(a) **Eligibility.** The OKDHS area nurse~~, or designee, utilizes the UCAT criteria and professional judgment in determining medical eligibility and level of care. To be eligible for Personal Care services, the individual must:~~determines medical eligibility for Personal Care services based on the UCAT and the determination that the member has unmet care needs that require Personal Care services. Personal Care services are initiated to support the informal care that is being provided in the member's home. Personal Care services are not intended to take the place of regular care and general maintenance tasks or meal preparation shared or done for one another by natural supports such as spouses or other adults who live in the same household. Additionally, Personal Care services are not furnished when they principally benefit the family unit. To be eligible for Personal Care services, the individual must:

(1) have adequate informal supports that contribute to care, or decision making ability as documented on the UCAT, to remain in his/her home without risk to his/her health, safety, and well-being:

(A) the individual must have the decision making ability to respond appropriately to situations that jeopardize his/her health and safety or available supports that compensate for his/her lack of ability as documented on the UCAT, or

(B) the individual who has his/her decision making ability, but lacks the physical capacity to respond appropriately to situations that jeopardize health and safety and has been informed by the OKDHS nurse of potential risks and consequences may be eligible;

(2) require a plan of care involving the planning and administration of services delivered under the supervision of professional personnel;

(3) have a physical impairment or combination of physical and mental impairments as documented on the UCAT. An individual who poses a threat to self or others as supported by professional documentation may not be approved for Personal Care services;

(4) not have members of the household or persons who routinely visit the household who, as supported by professional documentation, pose a threat of harm or injury to the individual or other household visitors;

(5) lack the ability to meet personal care needs without additional supervision or assistance, or to communicate needs to others; and

(6) require assistance, not of a technical nature, to prevent or minimize physical health regression and deterioration.

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

(1) **"ADL"** means the activities of daily living. Activities of daily living are activities that reflect the member's ability to perform self-care tasks essential for sustaining health and safety such as:

(A) bathing,

(B) eating,

(C) dressing,

(D) grooming,

(E) transferring (includes activities such as getting in and out of a tub, bed to chair, etc.),

(F) mobility,

(G) toileting, and

(H) bowel/bladder control.

(2) **"ADLs score of three or greater"** means the member cannot do at least one ADL at all or needs some help with two or more ADLs.

~~(3) **"ADLs score is two"** means the member needs some help with one ADL.~~

(~~4~~3) ~~**"Client "Consumer support very low need"**~~ means the member's UCAT ~~Client~~Consumer Support score is zero which indicates, in the UCAT assessor's clinical judgment, formal and informal sources are sufficient for present level of member need in most functional areas.

(~~5~~4) ~~**"Client"Consumer support low need"**~~means the member's UCAT ~~Client~~Consumer Support score is ~~5~~five which indicates, in the UCAT assessor's clinical judgment, support from formal and informal sources are nearly sufficient for present level of member need in most functional areas. The member, family, or informal supports are meeting most needs typically expected of family or household members to share or do for one another, such as general household maintenance. There is little risk of institutional placement with loss of current supports.

(~~6~~5) ~~**"Client "Consumer support moderate need"**~~means the UCAT ~~Client~~Consumer score is 15~~,~~ which indicates, in the UCAT assessor's clinical judgment, formal and informal support is available, but overall, it is inadequate, changing, fragile, or otherwise problematic. The member requires additional assistance that usually includes personal care assistance with one or more ADL tasks not available through Medicare, the Veterans Administration, or other federal entitlement programs. Support provided by informal caregivers is of questionable reliability due to one or more of the following:

(A) care or support is required continuously with no relief or backup available;

(B) informal support lacks continuity due to conflicting responsibilities such as work or child care;

(C) care or support is provided by persons with advanced age or disability; or

(D) institutional placement can reasonably be expected with any loss of existing support

(~~7~~6) ~~**"Client "Consumer support high need"**~~ means the member's UCAT ~~Client~~Consumer score is 25 which indicates, in the UCAT assessor's clinical judgment, formal and informal supports are not sufficient as there is very little or no support available to meet a high degree of member need.

(~~8~~7) **"Community Services Worker"** means any person employed by or under contract with a community services provider who provides, for compensation or as a volunteer, health-related services, training, or supportive assistance to frail elderly, disabled person(s), or person(s) with developmental disabilities, and who is not a licensed health professional.

(~~9~~8) **"Community Services Worker Registry"** means a registry established by the ~~Oklahoma Department of Human Services~~OKDHS, as required by Section 1025.1 et seq. of Title 56 of the Oklahoma Statutes, to list community services workers against whom a final investigative finding of abuse, neglect, or exploitation, as defined in Section 10-103 of Title 43A of the Oklahoma Statutes, involving a frail elderly, disabled person(s), or person(s) with developmental disabilities has been made by OKDHS or an administrative law judge, amended in 2002, to include the listing of SoonerCare ~~personal care assistants~~PCAs providing personal care services.

(~~10~~9) **"Instrumental activities of daily living (IADL)"** means those activities that reflect the member's ability to perform household chores and tasks within the community essential for sustaining health and safety such as:

(A) shopping,

(B) cooking,

(C) cleaning,

(D) managing money,

(E) using a telephone,

(F) doing laundry,

(G) taking medication, and

(H) accessing transportation.

~~(11) **"IADL"** means the instrumental activities of daily living.~~

(~~12~~10) **"IADLs score is at least six"** means the member needs some help with at least three IADLs or cannot do two IADLs at all.

(~~13~~11) **"IADLs score of eight or greater"** means the member needs some help with at least four IADLs or the member cannot do two IADLs at all and needs some help with one or more other IADLs.

~~(14) **"SoonerCare personal care services provider"** means a program, corporation, or individual who provides services under the state's SoonerCare personal care program or ADvantage Waiver to individuals who are elderly or who have a physical disability.~~

(~~15~~12) **"MSQ"** means the mental status questionnaire.

(~~16~~13) **"MSQ moderate risk range"** means a total weighted score of seven ~~or more~~to eleven which indicates an orientation-memory-concentration impairment or ~~a~~ memory impairment.

(~~17~~14) **"Nutrition moderate risk"** means the total weighted UCAT Nutrition score is ~~8~~eight or more which indicates poor appetite or weight loss combined with special diet requirements, medications, or difficulties in eating.

(~~18~~15) **"Social resources score is eight or more"** means the member lives alone or has no informal support when sick or needs assistance, or has little or no contact with others.

(c) **Medical eligibility minimum criteria for Personal Care.** The medical eligibility minimum criteria for Personal Care ~~is~~are the minimum UCAT score criteria which a member must meet for medical eligibility for personal care and are:

(1) ~~functional~~ ADLs score is a five or greater; or IADLs score of eight or greater; or Nutrition score is eight or greater; or the MSQ score is seven or greater; or the ADLs score is three and IADLs score is at least six~~,~~; and

(2) ~~Client~~Consumer Support is ~~moderate risk~~15 or more; or

~~Client~~Consumer Support score is five and the Social Resources score is eight or more.

(d) **Medical eligibility determination.** Medical eligibility for Personal Care is determined by the ~~Oklahoma Department of Human Services~~OKDHS. The medical decision for Personal Care is made by the OKDHS area nurse~~, or designee,~~ utilizing the ~~Uniform Comprehensive Assessment Tool (UCAT)~~UCAT.

~~(1) When Personal Care services are requested, the local office is responsible for completing the UCAT, Part III.~~

(~~2~~1) Categorical relationship must be established for determination of eligibility for Personal Care. If categorical relationship to Aid to the Disabled has not already been established, but there is an extremely emergent need for Personal Care and current medical information is not available, the local office authorizes a medical examination. When authorization is necessary, the county director issues the Authorization for Examination, OKDHS form 08MA016E, and the Report of Physician's Examination, OKDHS form 08MA02E, to a licensed medical or osteopathic physician (refer to OAC 317:30-5-1). The physician cannot be in a medical facility intern, residency, or fellowship program or in the full time employment of the Veterans Administration, Public Health Service, or other agency. The OKDHS county worker submits the information to the Level of Care Evaluation Unit (LOCEU) to request a determination of eligibility for categorical relationship. LOCEU renders a decision on categorical relationship using the same definition used by SSA. A follow-up is required by the OKDHS county worker with the Social Security Administration (SSA) to be sure that SSA's disability decision agrees with the decision of LOCEU.

(~~3~~2) Approved contract agencies or the AA may complete the UCAT Part I for intake and screening and forward the form to the county office.

~~(4) When the OKDHS county office does not receive a UCAT from the AA, a UCAT I is initiated by the DHS county staff upon receipt of the referral.~~

(3) Upon receipt of the referral, OKDHS county staff may initiate the UCAT, Part I.

~~(5) The OKDHS nurse completes the assessment visit within 10 working days of receipt of the referral for Personal Care from the OKDHS county worker or receipt of the UCAT I (Intake and Screening) request for Personal Care for the member who is SoonerCare eligible at the time of the request. The OKDHS nurse completes the assessment visit within 20 working days of SoonerCare application for the applicant who has not been determined financially SoonerCare eligible at the time of the request. The OKDHS county worker is responsible for contacting the applicant within three working days from the date of the receipt of the request for services to initiate the financial eligibility process.~~

(4) The OKDHS nurse is responsible for completing the UCAT assessment visit within 10 working days of the Personal Care referral for the applicant who is SoonerCare eligible at the time of the request. The OKDHS nurse completes the assessment visit within 20 working days of the referral for the applicant not determined SoonerCare eligible at the time of the request. If the UCAT Part I indicates the request is from an individual who resides at home and an immediate response is required to ensure the health and safety of the person (emergency situation) or to avoid institutional placement, the UCAT Part III assessment visit has top priority for scheduling.

(~~6~~5) During the assessment visit, the OKDHS nurse completes the UCAT ~~III~~ and reviews with the member rights to privacy, fair hearing,~~and~~ provider choice, and the pre-service acknowledgement agreement. The OKDHS nurse informs the ~~member~~applicant of medical eligibility criteria and provides information about ~~the different~~ OKDHS long-term care service options. The OKDHS nurse documents on the UCAT III whether the member wants to be considered for nursing facility level of care services or if the member is applying for a specific service program. If, based upon the information obtained during the assessment, the OKDHS nurse determines the member may be at risk for health and safety, an immediate referral is made to Adult Protective Services (APS). The referral is documented on the UCAT.

(A) If the ~~member's~~applicant's needs cannot be met by Personal Care services alone, the OKDHS nurse

informs the ~~member~~applicant of the other community ~~long-term~~long-term care service options. The OKDHS nurse assists the ~~member~~applicant in accessing service options selected by the ~~member~~applicant in addition to, or in place of, Personal Care services.

(B) If multiple household members are applying for SoonerCare Personal Care services, the UCAT assessment is done for all the household members at the same time.

(C) The OKDHS nurse informs the ~~member~~applicant of the qualified agencies in their local area available to provide services and obtains the ~~member's~~applicant's primary and secondary choice of agencies. If the ~~member~~applicant or family declines to choose a primary personal care service agency, the OKDHS nurse selects an agency from a list of all available agencies, using a round-robin system. The OKDHS nurse documents the name of the selected personal care ~~service~~provider agency.

(~~7~~6) The OKDHS nurse completes the UCAT ~~III~~ within three working days of the assessment visit and sends it to the OKDHS area nurse~~, or designee,~~ for medical eligibility determination. Personal ~~care~~Care service eligibility is established as ~~of~~ the date ~~that both~~when medical eligibility is approved and financial eligibility is established. This date serves as the certification date for services to be initiated.

(A) If the length of time from the date the initial assessment to the date of service eligibility determination exceeds ~~60~~90 days, ~~the assessment must be updated as necessary including a new signature and date. A~~a new UCAT and assessment visit is required ~~if the length of time exceeds 90 days.~~

(B) ~~Upon establishment of Personal Care service eligibility, the OKDHS nurse contacts the member's preferred personal care service agency, or if necessary, the secondary agency or the agency selected by the rotation system.~~The OKDHS area nurse assigns a medical certification period of not more than 36 months. The service plan period under the Service Authorization Model (SAM) is for a period of 12 months and is provided by the OKDHS nurse.

~~(C) Within one working day of agency acceptance, the OKDHS nurse forwards the referral to the personal care service agency for Service Authorization Model (SAM) packet development. [Refer to OAC 317:35-15-8(a)]. The date the referral is forwarded is the certification effective date.~~

~~(8) Following the development of the Service Authorization Model (SAM) packet by the personal care service agency, and within three working days of receipt of the packet from the agency, the OKDHS nurse reviews the packet to ensure agreement with the plan. Once agreement is established, the packet is forwarded to the OKDHS area nurse or designees for review.~~

(7) The OKDHS area nurse notifies the OKDHS county worker via ELDERS of the Personal Care certification. The authorization line is open via automation from ELDERS and five visits by a skilled nurse are automatically authorized.

~~(9) Within 10 working days of receiving the Service Authorization Model (SAM) packet from the OKDHS nurse, the OKDHS area nurse, or designee, certifies or denies the Service Authorization Model (SAM) packet. If there is certification, the OKDHS area nurse enters into the system the units authorized. Service Authorization Model (SAM) packets that fail to meet authorization are returned to the OKDHS nurse for revision or further justification by the personal care service agency.~~

(8) Upon establishment of Personal Care certification, the OKDHS nurse contacts the member's preferred provider agency, or when necessary, the secondary provider agency, or the provider agency selected by the round robin system. Within one working day of provider agency acceptance, the OKDHS nurse forwards the referral information to the provider agency for SAM plan development (see OAC 317:35-15-8(a)).

~~(10) The OKDHS area nurse, or designee, assigns a medical certification period of not more than 36 months. The service plan certification period under the Service Authorization Model (SAM) is for a period of 12 month.~~

(9) Following the SAM packet development by the provider agency, and within three working days of receipt of the packet from the agency, the OKDHS nurse reviews the documentation to ensure agreement with the plan. Once agreement is established, the packet is authorized by the designee or submitted to the area nurse for review.

~~(11) Once the OKDHS nurse is notified of the service plan authorization, and within one working day, forwards copies of the certified Personal Care Service Plan [OKDHS form 02AG031E (AG-6)] to the agency.~~

(10) Within 10 working days of receipt of the SAM case from the OKDHS nurse, the OKDHS area nurse either authorizes or denies the SAM units. If the SAM case fails to meet standards for authorization, the case is returned to the OKDHS nurse for revision for further justification.

~~(12) The OKDHS nurse notifies the OKDHS county worker in writing of the service and the number of authorized personal care service units including the start and end dates. The OKDHS county worker opens the service authorization. These steps are automated via ELDERS. Once the authorization is opened, five Service Authorization Model (SAM) visits by a skilled nurse are automatically authorized.~~

(11) Within one working day of knowledge of the authorization, the OKDHS nurse forwards the service plan authorization to the provider agency.

317:35-15-7. Certification for Personal Care

(a) **Personal Care certification period.** The first month of the Personal Care certification period must be the first month the member was determined eligible for Personal Care, both financially and medically.

(1) As soon as eligibility or ineligibility for Personal Care is established, the local office updates the computer form and the appropriate notice is computer generated.

Notice information is retained on the notice file for county use.

(2) An applicant approved for Personal Care under SoonerCare as categorically needy is mailed a Medical Identification Card.

(b) **Financial certification period for Personal Care Services.** The financial certification period for Personal Care services is 12 months. Redetermination of eligibility is completed according to the categorical relationship.

(~~b~~c) **Medical certification period for Personal Care services.** A medical certification period of not more than 36 months is assigned for an individual who is approved for Personal Care. The certification period for Personal Care is based on the UCAT evaluation and clinical judgment of the OKDHS area nurse or designee.

317:35-15-8. Agency Personal Care Service Authorization and Monitoring

(a) Within ten working days of receipt of the referral for Personal Care services, the Personal Care ~~Assessment/Service Planning Nurse~~provider agency nurse completes a ~~Service Authorization Model (SAM)~~SAM visit in the home to assess the member's Personal Care service needs, completes a ~~Service Authorization Model (SAM)~~SAM packet based on the member's needs and submits the packet to the OKDHS nurse. The member's ~~Service Authorization Model (SAM)~~SAM packet includes:

(1) ~~State Plan~~ Personal Care Progress Notes (OKDHS form 02AG044E);

(2) Personal Care Planning Schedule/Service Plan [OKDHS form 02AG030E (AG-5)/02AG031E (AG-6)]; and

(3) Personal Care Plan [OKDHS form 02AG029E (AG-4)]~~; and~~.

~~(4) Personal Care Service Plan [02AG031E (AG-6)].~~

(b) If more than one person in the household has been referred to receive Personal Care services, all household members'~~Service Authorization Model (SAM)~~SAM packets are discussed and developed with the eligible members so service delivery can be coordinated to achieve the most efficient use of resources. The number of units of Personal Care service authorized for each individual is distributed between all eligible family members to assure that the absence of one family member does not adversely affect the family member(s) remaining in the home. If one or more persons in the same household with a Personal Care member have been referred or are receiving other formal services, then those services are coordinated as well.

(c) The Personal Care ~~service~~provider agency receives ~~a certified Service Plan [OKDHS form 02AG031E (AG-6)]~~documentation from OKDHS as authorization to begin services. The agency delivers a copy of the care plan [OKDHS form 02AG029E(AG-4)] and ~~service plan~~the Personal Care Planning Schedule/Service Plan to the member upon initiating services.

(d) Prior to placing a ~~Personal Care attendant~~PCA in the member's home or other service-delivery setting, an ~~OSBI~~Oklahoma State Bureau of Investigation (OSBI) background check, ~~and~~an Oklahoma State Department of Health Registry check, and an OKDHS Community Services Worker Registry must be completed in accordance with Sections 1-1944 through 1-1948 of Title 63 of the Oklahoma Statutes. Payment is made for PCAs who provide Personal Care services who also meet the criteria as defined in OAC 317:35-15-2(c)(1)(1 through 8).

(e) The ~~Personal Care Assessment/Service Planning Nurse~~provider agency nurse monitors their member's plan of care.

(1) The Personal Care ~~service~~ provider agency contacts the member within five working days of receipt of the ~~approved care Service Plan [OKDHS form 02AG031E (AG-6)]~~authorized document in order to ~~make sure~~ensure that services have been implemented and the needs of the member are being met.

(2) The ~~Personal Care Assessment/Service Planning Nurse~~provider agency nurse makes a ~~Service Authorization Model (SAM)~~SAM home visit at least every six months to assess the member's satisfaction with their care and to evaluate the ~~Service Authorization Model (SAM)~~SAM packet for adequacy of goals and ~~units~~ authorized units. Whenever a home visit is made, the ~~Personal Care Assessment/Service Planning Nurse~~the provider agency nurse documents their findings in the ~~State Plan~~ Personal Care Progress Notes ~~(OKDHS form 02AG044E)~~. The ~~personal care~~provider agency forwards a copy of the Progress Notes to the OKDHS nurse for review within 5 business days of the visit. The monitoring visit may be conducted by ~~an LPN. If an LPN or social worker conducts the monitoring visit, an RNmust~~a Licensed Practical Nurse only when the PCA is not performing hands-on personal care. A Registered Nurse must also co-sign the progress notes.

(3) Requests by the ~~Personal Care service~~provider agency nurse to change the number of units authorized in the ~~Service Authorization Model (SAM)~~SAM packet are submitted to OKDHS and are approved or denied by the OKDHS area nurse, or designee, prior to implementation of the changed number of units.

(4) Annually, or more frequently if the member's needs change, the ~~Personal Care Assessment/Service Planning Nurse~~provider agency nurse re-assesses the member's need and develops a new ~~Service Authorization Model (SAM) eligibility~~SAM packet to meet ~~personal care~~the member's needs. The provider agency nurse conducts a home visit and completes and submits the annual reassessment documents to the OKDHS nurse no sooner than 60 days before the existing service plan end-date, but sufficiently in advance of the end-date.

(5) If the member is unstaffed, the ~~Personal Care service~~provider agency communicates with the member and makes efforts to ~~restaff.~~re-staff. It is recommended the provider agency contacts unstaffed members weekly by telephone to actively monitor the health and safety of the member and documents ongoing efforts to provide staff. If the member is unstaffed for 30 calendar days, the provider agency notifies the OKDHS nurse on an OKDHS

form 02AG032E~~ (AG-7)~~, Provider Communication Form. The OKDHS nurse contacts the member and if the member chooses, initiates a transfer of the member to another ~~Personal Care service~~provider agency that can provide staff.

317:35-15-8.1. Agency Personal Care services; billing, and problem resolution

The ~~ADvantage Administration (AA)~~AA certifies qualified Personal Care ~~service~~provider agencies and facilitates the execution of the agencies' SoonerCare contracts on behalf of the OHCA. The OHCA will check the list of providers that have been barred from Medicare/SoonerCare participation to ensure that the Personal Care services agency is not listed.

(1) **Payment for Personal Care.** Payment for Personal Care services is ~~generally~~ made for care provided in the member's "own home" or in other limited types of living arrangements in accordance with OAC 317:35-15-2(b)(1 through 4).~~ In addition to an owned or rented home, a rented apartment, room or shelter shared with others is considered to be the member's "own home". A facility that meets the definition of a nursing facility, room and board, licensed residential care facility, licensed assisted living facility, group home, rest home or a specialized home as set forth in O.S. Title 63, Section 1-819 et seq., Section 1-890.1 et seq., and Section 1-1902 et seq., and/or in any other type of settings prohibited under applicable federal or state statutes, rules, regulations, or other written instruments that have the effect of law is not a setting that qualifies as the member's "own home" for delivery of Personal Care services through SoonerCare. With prior approval of the OKDHS area nurse, Personal Care services may be provided in an educational or employment setting to assist the member in achieving vocational goals identified on the care plan.~~

(A) **Use of ~~Personal Care service~~provider agency.** To provide Personal Care services, an agency must be licensed by the Oklahoma State Department of Health, meet certification standards identified by OKDHS, and possess a current SoonerCare contract.

(B) **Reimbursement.** Personal Care services payment on behalf of a member is made according to the type of service and number of units of Personal Care services authorized in the ~~Service Authorization Model (SAM)~~SAM packet.

(i) The amount paid to ~~Personal Care services providers~~provider agencies for each unit of service is according to the established SoonerCare rates for the Personal Care services. Only authorized units contained in each eligible member's individual ~~Service Authorization Model (SAM)~~SAM packet are eligible for reimbursement. ~~Providers~~Provider agencies serving more than one Personal Care service member residing in the same residence will assure that the members'~~Service Authorization Model (SAM)~~SAM packets combine units in the most efficient manner possible to meet the needs of all eligible persons in the residence.

(ii) Payment for Personal Care services is for tasks performed in accordance with OAC 317:30-5-951 only when listed on an authorized plan of care. Payment for Personal Care skilled nursing service is made on behalf of the member for assessment/evaluation and associated service planning per ~~assessment/service planning~~SAM nursing visit~~ by the Personal Care Assessment/Service Planning Nurse~~.

(2) **Issue resolution.**

(A) The provider agency provides a written copy of their grievance process to each member at the commencement of services. The written grievance process includes the name and phone number of a provider agency contact person who is responsible for responding to such complaints and grievances. If the member is dissatisfied with the Personal Care ~~services~~ provider agency or the assigned PCA~~,~~ and has exhausted attempts to work with the Personal Care ~~services~~provider agency's grievance process without resolution, the member may contact the OKDHS nurse to attempt to resolve the ~~issues~~issue(s). The OKDHS nurse is to contact the State Plan Care unit for issues that cannot be resolved between the OKDHS nurse and the Personal Care Provider agency. The member has the right to appeal to the OHCA in accordance with OAC 317:2-1-2.~~ For members receiving ADvantage services, the member or family should contact their case manager for the problem resolution. If the problem remains unresolved, the member or family should contact the Consumer Inquiry System (CIS). Providers are required to provide the CIS contact number to every member.The ADvantage Program member also has the right to appeal to the OHCA in accordance with OAC 317:2.~~

(B) When a problem with performance of the ~~Personal Care attendant~~PCA is identified, the provider agency staff will conduct a counseling conference with the member and/or the ~~attendant~~PCA as appropriate. ~~Agency~~The Provider agency staff will counsel the ~~attendant~~PCA regarding problems with his/her performance.

(3) **Persons ineligible to serve as ~~Personal Care Assistants~~PCAs.** Payment from SoonerCare funds for Personal Care services may not be made to an individual who is a legally responsible family member~~ (spouse, legal guardian or parent of a minor child)~~ of the member, such as a spouse, legal guardian, or parent of minor child, to whom he/she is providing personal care services.

317:35-15-9. Redetermination of financial eligibility for Personal Care

The OKDHS county ~~worker~~Social Services Specialist must complete a redetermination of financial eligibility before the end of the certification period. A notice is generated only if there is a change which affects the ~~client's~~member's financial eligibility.

317:35-15-10. Redetermination of medical eligibility for Personal Care services

(a) **Medical eligibility redetermination.** The OKDHS area nurse~~, or designee,~~ must complete a redetermination of medical eligibility before the end of the long-term care medical certification period.

(b) **Recertification.** The OKDHS nurse re-assesses the Personal Care services member for medical re-certification based on the member's needs and level of caregiver support required, using the UCAT at least every 36 months. During this re-certification assessment, the OKDHS nurse informs the member of the state's other SoonerCare long-term care options. The OKDHS nurse submits the re-assessment to the OKDHS area nurse~~, or designee,~~ for recertification. Documentation is sent to the OKDHS area nurse~~, or designee,~~ no later than the tenth day of the month in which the certification expires. When the OKDHS area nurse~~, or designee~~ determines medical eligibility for Personal Care services, a recertification review date is entered on the system.

(c) **Change in amount of units or tasks~~ within Personal Care service for Personal Care service members.~~** When the Personal Care ~~services~~provider agency determines a need for a change in the amount of units or tasks within the Personal Care service, a new ~~Personal Care Service Authorization Model (SAM)~~SAM packet is completed and submitted to OKDHS within five calendar days of identifying the assessed need. The change is approved or denied by the OKDHS area nurse, or designee, prior to implementation.

(d) **Voluntary closure of Personal Care services.** If a member decides Personal Care services are no longer needed to meet his/her needs, a medical decision is not needed. The member and the OKDHS nurse or OKDHS county ~~worker~~Social Services Specialist completes and signs OKDHS form 02AG038E, ~~AG 17, Voluntary Action of Personal Care Case Closure form~~ADv-2, State Plan Personal Care/ADvantage Program Voluntary Withdrawal Request. The OKDHS nurse submits closure notification to the provider agency.

(e) **Resuming Personal Care services.** If a member approved for Personal Care services has been without Personal Care services for less than 90 days but still has a current ~~Personal Care services~~ medical and SoonerCare financial eligibility approval, Personal Care services may be resumed using the member's previously approved ~~Service Authorization Model (SAM)~~SAM packet. The Personal Care ~~service~~provider agency submits a Personal Care services skilled nursing re-assessment of need within ten working days of the resumed plan start date using the State Plan Personal Care Progress Notes, OKDHS form 02AG044E. If the member's needs dictate, the Personal Care ~~services~~provider agency may submit a request for a change in authorized Personal Care services units with a ~~Service Authorization Model (SAM)~~SAM packet to OKDHS.

(f) **Financial ineligibility.** ~~Anytime~~When the OKDHS determines a Personal Care services member does not meet the SoonerCare financial eligibility criteria, the ~~local~~ OKDHS office notifies the ~~member, Personal Care service provider, and the OKDHS nurse of financial ineligibility.~~OKDHS area nurse to initiate the closure process due to financial ineligibility. Individuals determined financially ineligible for Personal Care services are notified by OKDHS in writing of the determination and of their right to appeal the decision. The OKDHS nurse submits closure notification to the provider agency.

(g) **Closure due to medical ineligibility.** ~~If the local OKDHS office is notified through the system that a member is no longer medically eligible for Personal Care, the OKDHS county worker notifies the member of the decision. The OKDHS nurse notifies the Personal Care service agency.~~Individuals determined medically ineligible for Personal Care services are notified by OKDHS in writing of the determination and of their right to appeal the decision. The OKDHS nurse submits closure notification to the provider agency.

(h) **Termination of State Plan Personal Care Services.**

(1) Personal Care services may be discontinued if:

(A) the member poses a threat to self or others as supported by professional documentation; or

(B) other members of the household or persons who routinely visit the household who, as supported by professional documentation, pose a threat ~~of harm or injury~~ to the member or other household visitors; or

(C) the member or family member fails to cooperate with Personal Care service delivery or to comply with OHCA or OKDHS rules as supported by professional documentation; or

(D) the member's health or safety is at risk as supported by professional documentation; or

(E) additional services, either "formal" (i.e., paid by SoonerCare or some other funding source) or "informal" (i.e., unpaid) are provided in the home eliminating the need for SoonerCare Personal Care services~~.~~; or

(F) the individual's living environment poses a physical threat to self or others as supported by professional documentation where applicable, and measures to correct hazardous conditions or assist the person to move are unsuccessful or are not feasible; or

(G) the member refuses to select and/or accept the services of a provider agency or PCA for 90 consecutive days as supported by professional documentation.

~~(2) The member refuses to select and/or accept the services of a Personal Care service agency or PCA for 90 consecutive days as supported by professional documentation.~~

(~~3~~2) For persons receiving Personal Care services, the Personal Care ~~services~~provider agency submits documentation with the recommendation to discontinue services to OKDHS. The OKDHS nurse reviews the documentation and submits it to the OKDHS Area Nurse for determination. The OKDHS nurse notifies ~~the member and~~ the Personal Care ~~service~~provider agency or PCA, and the local OKDHS county worker of the decision to terminate services. The member is sent an official closure notice informing them of their appropriate member rights to appeal the decision to discontinue services.

317:35-15-13.1. Individual Personal Care service management

(a) An ~~individual PCA~~IPCA may be utilized to provide ~~PC~~Personal Care services when it is documented to be in the best interest of the member to have an ~~individual personal care attendant (PCA)~~IPCA or when there are no qualified ~~PC service~~Personal Care provider agencies available in the member's local area. ~~When an individual PCA is utilized, the OKDHS nurse explains OHCA form HCA-66, Authorization for Withholding of FICA Tax in Personal Care, to the member and obtains his/her signature.~~ OHCA will check the list of providers that have been barred from Medicare/Medicaid participation to ensure that the ~~individual provider~~IPCA is not listed.

(b) After ~~PC~~Personal Care services eligibility is established and prior to implementation of ~~PC~~Personal Care services using an ~~individual PAC~~IPCA, the OKDHS nurse reviews the care plan with the member and ~~individual PCA~~IPCA and notifies the member and ~~PCA~~IPCA to begin ~~PC~~Personal Care services delivery. The OKDHS nurse maintains the original care plan and forwards a copy of the care plan to the ~~chosen PCA~~selected IPCA and member within one working day of ~~notice~~receipt of approval.

(c) The OKDHS nurse contacts the member within five working days to ensure services are in place and meeting the member's needs and also monitors the care plan for members with an ~~individual PCA~~IPCA. For any member receiving ~~PC~~Personal Care services utilizing an ~~individual PCA~~IPCA, the OKDHS nurse makes a home visit at least every ~~180 days~~six months beginning within 90 days of the date of ~~PC~~Personal Care service initiation. OKDHS assesses the member's satisfaction with their ~~PC~~Personal Care services and evaluates the care plan for adequacy of goals and units allocated. Requests for changes in the units authorized in the care plan must be approved by the OKDHS area nurse, or designee, prior to implementation of the changed number of units.

~~(d) If a member requires an individual PCA and is also approved for ADvantage waiver, the ADvantage case manager develops and monitors PC service delivery as part of the ADvantage service plan. The ADvantage case manager reviews the care plan with the member and forwards a copy to the individual PCA. The ADvantage case manager contacts the member within five calendar days of service plan certification by the AA in order to make sure that services have been implemented. The ADvantage case manager contacts the member within 30 calendar days of service plan certification by the AA in order to make sure the needs of the member are being met. Requests for changes in authorized PC services units are submitted by the ADvantage case manager for approval or denial by the AA or designee, prior to implementation of the changes in units. The ADvantage case manager contacts the member monthly and makes a home visit at least every 90 days to evaluate the care plan for adequacy of goals and units allocated.~~

~~(e) With the exception of members served by the ADvantage or any other Home and Community Based Services (HCBS) Waiver, the OKDHS nurse is responsible for assessing and monitoring the provision of personal care for Individual Personal Care members. This function involves advocacy, service planning, coordination, monitoring and problem solving with service providers and with families in the provision of services.~~

~~(f) Under certain circumstances, the use of informal supports as individual PCAs may be the only available option for providing services to the member. The ADvantage Program consumer's interdisciplinary team authorizes the use of informal supports for the PC program.~~

~~(1) Components built into the care plan to prevent failure/burnout of informal supports may include, but are not limited to, the following:~~

~~(A) utilization of additional informal supports, other than the one providing PCA services; and~~

~~(B) provision of home delivered meals, adult day care, or PC services by an agency.~~

~~(2) The ADvantage Program case manager routinely reviews the care plan to ensure the services authorized meet the member's needs and to assess the stability of the informal support system. For members who receive services from an individual PCA, the case manager may increase the frequency of these reviews.~~

317:35-15-13.2. ~~Individual Personal Care~~IPCA provider contractor; billing, training, and problem resolution

While OHCA is the contractor authorized under federal law, the ~~Oklahoma Department of Human Services (OKDHS)~~OKDHS initiates initial contracts with qualified individuals for provision of Personal Care services as defined in OAC 317:35-15-2. The contract renewal for the ~~PCA~~IPCA is the responsibility of the ~~Oklahoma Health Care Authority (OHCA)~~OHCA.

(1) **Payment for ~~Personal Care~~IPCA.** Payment for Personal Care services is ~~generally~~ made for care provided in the member's "own home" or in other limited types of living arrangements in accordance with OAC 317:35-15-2(b)(1 through 4). ~~A facility that meets the definition of a nursing facility, room and board, licensed residential care facility, licensed assisted living facility, group home, rest home or a specialized home as set forth in O.S. Title 63, Section 1-819 et seq., Section 1-890.1 et seq., and Section 1-1902 et seq., does not constitute a suitable substitute home. Personal Care may not be approved if the member lives in the PCA's home except with the interdisciplinary team's written approval. The potential individual PCA must meet the minimum requirements under (2) of this subsection. With OKDHS area nurse approval, or for ADvantage waiver members, with service plan authorization and ADvantage Program Manager approval, Personal Care services may be provided in an educational or employment setting to assist the member in achieving vocational goals identified on the service plan.~~

(A) **Reimbursement.** Personal Care payment for a member is made according to the number of units of service identified in the service plan.

(i) The unit amounts paid to individual contractors is according to the established rates. A service plan will be developed for each eligible individual in the home and units of service assigned

to meet the needs of each member. The service plans will combine units in the most efficient manner to meet the needs of all eligible persons in the household.

(ii) From the total amounts billed by the ~~individual PCA~~IPCA in (i) of this subparagraph, the OHCA (acting as agent for the member-employer) withholds the appropriate percentage of FICA tax and sends it to the Internal Revenue Service as the individual contractor's contribution toward Social Security coverage. To assure that the individual contractor's social security account may be properly credited, it is vital that the individual contractor's social security number be entered correctly on each claim. ~~In order for the OHCA to withhold FICA tax, the LTC nurse must obtain a signed OHCA Form HCA 66, Authorization for Withholding of FICA Tax in Personal Care, from the member as soon as the area nurse, or designee, has approved Personal Care. A copy of the signed HCA 66 must be in the case record. A signed OHCA 0026, Personal Care Program Individual Contract, must be on file with the OHCA before the individual contractor's first claim can be submitted.~~

(iii) The contractor payment fee covers all Personal Care services included on the service and care plans developed by the ~~LTC~~OKDHS nurse~~ or ADvantage case manager~~. Payment is made for direct services and care of the eligible member(s) only. The area nurse, or designee, authorizes the number of units of service the member receives ~~each month~~.

(iv) A member may select more than one ~~individual contractor~~IPCA. This may be necessary as indicated by the service and care plans.

(v) The ~~individual contractor~~IPCA may provide SoonerCare Personal Care services for several households during one week, as long as the daily number of paid service units do not exceed eight per day. The total number of hours per week cannot exceed 40.

(B) **Release of wage and/or employment information for ~~individual contractors~~IPCAs.** Any inquiry received by the local office requesting wage and/or employment information for an ~~individual Personal Care contractor~~IPCA will be forwarded to the OHCA, Claims Resolution.

(2) **Member selection of ~~individual PCA~~IPCA.** Members and/or family members recruit, interview, conduct reference checks, and select the individual to be considered as an ~~individual contractor~~IPCA. Prior to placing a Personal Care service provider in the member's home, an OSBI background check and registry check must be completed in accordance with Section 1-1944 through 1-1948 of Title 63 of the Oklahoma Statutes. The OKDHS ~~LTC~~ nurse must also check the Certified Nurse ~~Aid~~Aide Registry. The OKDHS ~~LTC~~ nurse must affirm that the applicant's name is not contained on any of the registries. The ~~LTC~~OKDHS nurse will notify the OHCA if the applicant is on the registry.

(A) **Persons eligible to serve as individual Personal Care Assistants.** Payment is made for Personal Care Services to ~~an individual who:~~IPCAs who provide Personal Care services who also meet the criteria as defined in OAC 317:35-15-2(c)(1 through 8).

~~(i) is at least 18 years of age,~~

~~(ii) has no pending notation related to abuse, neglect or exploitation as reported by the Oklahoma State Department of Health Nurse Aide Registry,~~

~~(iii) has no criminal background history or registry listings that prohibit employment,~~

~~(iv) demonstrates the ability to understand and carry out assigned tasks,~~

~~(v) is not a legally responsible family member (spouse, legal guardian, or parent of a minor child) of the member being served,~~

~~(vi) has a verifiable work history and/or personal references, verifiable identification, and~~

~~(vii) meets any additional requirements as outlined in the contract and certification requirements with the Oklahoma Health Care Authority.~~

(B) **Persons ineligible to serve as ~~Personal Care Assistants~~IPCAs.** Payment from SoonerCare funds for Personal Care services may not be made to an individual who is a legally responsible family member (spouse, legal guardian, or parent of a minor child) of the member ~~to whom he/she is providing personal care services~~being served (exceptions to legal guardian are made only with prior approval from Aging Services Division).

(i) Payment cannot be made to ~~a~~an OKDHS or OHCA employee. Payment cannot be made to an immediate family member of an OKDHS employee who works in the same county without OKDHS/Aging Services Division approval. When a family member relationship exists between an OKDHS ~~LTC~~ nurse and ~~a PCA~~an IPCA in the same county, the ~~LTC~~OKDHS nurse cannot manage services for a member whose ~~individual provider~~IPCA is a family member of the ~~LTC~~OKDHS nurse.

(ii) If it is determined that an OKDHS or OHCA employee is interfering in the process of providing Personal Care ~~Services~~services for personal or family benefit, he/she will be subject to disciplinary action.

(3) **Orientation of the ~~Personal Care Assistant~~IPCA.** When a member selects an ~~individual PCA~~IPCA, the ~~LTC~~OKDHS nurse contacts the individual to report to the county office to complete the ~~ODH~~Oklahoma State Department of Health form 805, Uniform Employment Application for Nurse Aide Staff, and the OKDHS form 06PE039E, Employment Application Supplement, and for a determination of qualifications

and orientation. ~~This~~For Personal Care members, this process is the responsibility of the ~~LTC~~OKDHS nurse. The ~~PCA~~IPCA can begin work when:

(A) he/she has been interviewed by the member,

(B) he/she has been oriented by the ~~LTC~~OKDHS nurse,

(C) he/she has executed a contract (OHCA-0026) with the OHCA,

(D) the effective service date has been established,

(E) all registries have been checked and the ~~PCA's~~IPCA's name is not listed,

(F) the Oklahoma State Department of Health Nurse Aide Registry has been checked and no notations were found, and

(G) the OSBI background check has been completed.

(4) **Training of ~~Personal Care Assistants~~IPCAs.** It is the responsibility of the ~~LTC~~OKDHS nurse to make sure ~~for each client,~~ that the ~~PCA~~IPCA has the training needed to carry out the plan of care prior to service initiation for each member.

(5) **Problem resolution related to the performance of the ~~Personal Care Assistant~~IPCA.** When it comes to the attention of the ~~LTC~~OKDHS nurse or ~~worker~~OKDHS Social Services Specialist that there is a problem related to the performance of the ~~PCA~~IPCA, a counseling conference is held between the member, ~~LTC~~OKDHS nurse, and worker. The ~~LTC~~OKDHS nurse will counsel the ~~PCA~~IPCA regarding problems with his/her performance. Counseling is considered when ~~the~~ staff ~~believe~~believes that counseling will result in improved performance.

(6) **Termination of the ~~PCA~~IPCA Provider Agreement.**

(A) A recommendation for the termination of ~~a PCA's~~an IPCA's contract is submitted to the OHCA and the services of the ~~PCA~~IPCA are suspended immediately when:

(i) ~~a PCA's~~an IPCA's performance is such that his/her continued participation in the program could pose a threat to the health and safety of the member or others; or

(ii) the ~~PCA~~IPCA failed to comply with the expectations outlined in the PCA Provider Agreement and counseling is not appropriate or has not been effective; or

(iii) ~~a PCA's~~an IPCA's name appears on the OKDHS Community Services Worker Registry, any of the registries listed in Section 1-1947 of Title 63 of the Oklahoma Statutes, even though his/her name may not have appeared on the Registry at the time of application or hiring.

(B) The ~~LTC~~OKDHS nurse makes the recommendation for the termination of the ~~PCA~~IPCA to the OKDHS State Office Aging Services Division who then notifies the OHCA Legal Division of the recommendation. When the problem is related to allegations of abuse, neglect, or exploitation, OKDHS Adult Protective Services, State Attorney General's Medicaid Unit, the OHCA, and the Oklahoma State Department of Health are notified by the ~~LTC~~OKDHS nurse.

(C) When the problem is related to allegations of abuse, neglect or exploitation, the ~~LTC~~OKDHS nurse follows the process as outlined in OAC 340:100-3-39.

317:35-15-14. Billing procedures for Personal Care

Billing procedures for Personal Care Services are contained in the OKMMIS Billing and Procedure Manual. Questions regarding billing procedures that cannot be resolved through a study of the manual are referred to the OHCA. Contractors for Personal Care bill on CMS-1500. The ~~OKDHS county office~~OHCA provides instructions to an ~~individual PCA~~IPCA for completion of the claim at the time of the contractor orientation. ~~Each Personal Care contractor~~The contracted provider submits a claim for each member. The ~~contractor~~contracted provider prepares claims for services provided and submits the claims to the fiscal agent who is responsible for assuring that the claims have been properly completed. All Personal Care contractors must have a unique provider number. New ~~contractors~~contracted providers will be mailed the provider number after they have been placed on the claims processing contractor's provider file. Service time of Personal Care and Nursing is documented solely through the Interactive Voice Response Authentication (IVRA) system after access to the system is made available by OKDHS. The IVRA system provides alternate backup solutions should the automated system be unavailable. In the event of IVRA backup system failure, the provider will document time in accordance with their provider agency backup plan. The provider agency's backup procedures are only permitted when the IVRA system is unavailable.

317:35-15-15. Referral for social services

In many situations, ~~adults~~members who are receiving medical services through SoonerCare need social services. The OKDHS nurse may make referrals for social services to the OKDHS worker in the local office. In addition to these referrals, a request for social services may be initiated by a member or by another individual acting upon behalf of a member.

(1) The OKDHS ~~county worker~~Social Services Specialist is responsible for providing the indicated services or for referral to the appropriate resource outside the Department if the services are not available within the Department.

(2) Among the services provided by the OKDHS ~~worker~~Social Services Specialist are:

(A) Services that will enable individuals to attain and/or maintain as good physical and mental health as possible;

(B) Services to assist patients who are receiving care outside their own homes in planning for and returning to their own homes or to other alternate care;

(C) Services to encourage the development and maintenance of family and community interest and ties;
(D) Services to promote maximum independence in the management of their own affairs;
(E) Protective services, including evaluation of need for and arranging for guardianship; and
(F) Appropriate family planning services, which include assisting the family in acquiring means to responsible parenthood. Services are offered in making the necessary referral and follow-up.

[OAR Docket #15-510; filed 6-12-15]

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

[OAR Docket #15-506]

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March 31, 2015
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 8, 2015
FINAL ADOPTION:
June 8, 2015
EFFECTIVE:
August 27, 2015
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Rules are amended to include all 1915(c) waiver programs to comply with 42 CFR 441.301 regarding conflict of interest provisions for case management services. These changes are necessary as the regulation states providers of HCBS for the individual, or those who have an interest in or are employed by a provider of HCBS for the individual, must not provide case management services or develop the person centered service plan. Without the recommended changes, the State is out of compliance with CMS and may be in risk of losing federal funding. Additionally, rules are modified to provide clarification within the institutional transition case management service definition. Without the recommended changes, the policy will remain inconsistent with references to institutional transition as transitional case management services.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 17. ADVANTAGE WAIVER SERVICES

317:35-17-14. Case Management services

(a) Case management services involve ongoing assessment, service planning and implementation, service monitoring and evaluation, member advocacy, and discharge planning.

(1) Within one working day of receipt of an ADvantage referral from the ADvantage Administration (AA), the case management supervisor assigns a case manager to the member. The case manager makes a home visit to review the ADvantage program (its purpose, philosophy, and the roles and responsibilities of the member, service provider, case manager, and OKDHS in the program), review, update and complete the UCAT assessment, discuss service needs and ADvantage service providers. The Case Manager notifies in writing the member's UCAT identified primary physician that the member has been determined eligible to receive ADvantage services. The notification is via a preprint form that contains the member's signed permission to release this health information and requests physician's office verification of primary and secondary diagnoses and diagnoses code obtained from the UCAT.

(2) Within 14 calendar days of the receipt of an ADvantage referral, the case manager completes and submits to the AA an individualized care plan and service plan for the member, signed by the member and the case management supervisor. The case manager completes and submits to the AA the annual reassessment service plan documents no sooner than 60 days before the existing service plan end date but sufficiently in advance of the end date to be received by the AA at least 30 calendar days before the end date of the existing service plan. Within 14 calendar days of receipt of a Service Plan Review Request (SPR) from the AA, the Case Manager provides corrected care plan and service plan documentation. Within five calendar days of assessed need, the case manager completes and submits a service plan addendum to the AA to amend current services on the care plan and service plan. The care plan and service plan are based on the member's service needs identified by the UCAT, Part III, and includes only those ADvantage services required to sustain and/or promote the health and safety of the member. The case manager uses an interdisciplinary team (IDT) planning approach for care plan and service plan development. Except for extraordinary circumstances, the IDT meetings are to be held in the member's home. Variances from this policy must be presented to, and approved by, the AA in advance of the meeting. If in-home care is the primary service, the IDT includes, at a minimum, the member, a

nurse from the ADvantage in-home care provider chosen by the member, and the case manager. Otherwise, the member and case manager constitute a minimum IDT.

(3) The case manager identifies long-term goals, challenges to meeting goals, and service goals including plan objectives, actions steps and expected outcomes. The ADvantage case manager documents on the care plan the presence of two or more ADvantage members residing in the same household and/or when the member and personal care provider reside together. The case manager documents on the IVRA system in the member record any instance in which a member's health or safety would be "at risk" if even one personal care visit is missed. The case manager identifies services, service provider, funding source, units and frequency of service and service cost, cost by funding source and total cost for ADvantage services. The member signs and indicates review/agreement with the care plan and service plan by indicating acceptance or non-acceptance of the plans. The member, the member's legal guardian or legally authorized representative shall sign the service plan in the presence of the case manager. The signatures of two witnesses are required when the member signs with a mark. If the member refuses to cooperate in development of the service plan, or, if the member refuses to sign the service plan, the case management agency refers the case to the AA for resolution. In addition, based on the UCAT and/or case progress notes that document chronic uncooperative or disruptive behaviors, the OKDHS nurse or AA may identify members that require AA intervention through referral to the AA's Escalated Issues unit.

(A) For members that are uncooperative or disruptive, the case manager develops an individualized plan to overcome challenges to receiving services focusing on behaviors, both favorable and those that jeopardize the member's well-being and includes a design approach of incremental plans and addenda that allow the member to achieve stepwise successes in the modification of their behavior.

(B) The AA may implement a service plan without the member's signature when, for these members, the presence of a document that "requires" their signature may itself trigger a "conflict". In these circumstances, mental health/behavioral issues may prevent the member from controlling their behavior to act in their own interest. Since the person by virtue of level of care and the IDT assessment, needs ADvantage services to assure their health and safety, the AA may authorize the service plan if the case manager demonstrates effort to work with and obtain the member's agreement. Should negotiations not result in agreement with the care plan and service plan, the member may withdraw their request for services or request a fair hearing.

(4) CD-PASS Planning and Supports Coordination.

(A) The ADvantage Case Management provider assigns to the CD-PASS member a Case Manager that has successfully completed training on CD-PASS, Independent Living Philosophy, Person-Centered Planning and the individual budgeting process and process guidelines. Case Managers that have completed this specialized CD-PASS training are referred to as Consumer-Directed Agent/Case Managers (CDA/CM) with respect to their CD-PASS service planning and support role in working with CD-PASS members. The CDA/CM educates the member about their rights and responsibilities as well as about community resources, service choices and options available to the member to meet CD-PASS service goals and objectives.

(B) The member may designate a family member or friend as an "authorized representative" to assist in the service planning process and in executing member employer responsibilities. If the member chooses to designate an "authorized representative", the designation and agreement identifying the "willing adult" to assume this role and responsibility is documented with dated signatures of the member, the designee and the member's Case Manager or the AA staff.

(i) A person having guardianship or power of attorney or other court sanctioned authorization to make decisions on behalf of the member has legal standing to be the member's designated "authorized representative".

(ii) An individual hired to provide Consumer-Directed Personal Assistance Services and Supports (CD-PASS) services to a member may not be designated the "authorized representative" for the member.

(iii) The case manager reviews the designation of Authorized Representative, Power of Attorney and Legal Guardian status on an annual basis and this is included in the reassessment packet to AA.

(C) The CDA/CM provides support to the member in the Person-Centered CD-PASS Planning process. Principles of Person-Centered Planning are as follows:

(i) The person is the center of all planning activities.

(ii) The member and their representative, or support team, are given the requisite information to assume a controlling role in the development, implementation and management of the member's services.

(iii) The individual and those who know and care about him or her are the fundamental sources of information and decision-making.

(iv) The individual directs and manages a planning process that identifies his or her strengths, capacities, preferences, desires, goals and support needs.

(v) Person-Centered Planning results in personally-defined outcomes.

(D) The CDA/CM encourages and supports the member, or as applicable their designated "authorized representative", to lead, to the extent feasible, the

CD-PASS service planning process for Personal Services Assistance. The CDA/CM helps the member define support needs, service goals and service preferences including access to and use of generic community resources. Consistent with member-direction and preferences, the CDA/CM provides information and helps the member locate and access community resources. Operating within the constraints of the Individual Budget Allocation (IBA) units, the CDA/CM assists the member in translating the assessment of member needs and preferences into an individually tailored, personalized service plan.

(E) To the extent the member prefers, the CDA/CM develops assistance to meet member needs using a combination of traditional Personal Care and CD-PASS PSA services. However, the CD-PASS IBA and the PSA unit authorization will be reduced proportional to agency Personal Care service utilization.

(F) The member determines with the PSA to be hired, a start date for PSA services. The member coordinates with the CDA/CM to finalize the service plan. The start date must be after authorization of services, after completion and approval of the background checks and after completion of the member employee packets.

(G) Based on outcomes of the planning process, the CDA/CM prepares an ADvantage service plan or plan amendment to authorize CD-PASS Personal Service Assistance units consistent with this individual plan and notifies existing duplicative Personal Care service providers of the end date for those services.

(H) If the plan requires an APSA to provide assistance with Health Maintenance activities, the CDA/CM works with the member and, as appropriate, arranges for training by a skilled nurse for the member or member's family and the APSA to ensure that the APSA performs the specific Health Maintenance tasks safely and competently;

(i) If the member's APSA has been providing Advanced Supportive Restorative Assistance to the member for the same tasks in the period immediately prior to being hired as the PSA, additional documentation of competence is not required;

(ii) If the member and APSA attest that the APSA has been performing the specific Health Maintenance tasks to the member's satisfaction on an informal basis as a friend or family member for a minimum of two months in the period immediately prior to being hired as the PSA, and no evidence contra-indicates the attestation of safe and competent performance by the APSA, additional documentation is not required.

(I) The CDA/CM monitors the member's well being and the quality of supports and services and assists the member in revising the PSA services plan as needed. If the member's need for services changes due to a change in health/disability status and/or a change in the level of support available from other sources to meet needs, the CDA/CM, based upon an updated assessment, amends the service plan to modify CD-PASS service units appropriate to meet additional member's need and forwards the plan amendment to the AA for authorization and update of the member's IBA.

(J) In the event of a disagreement between the member and CD-PASS provider the following process is followed:

(i) either party may contact via a toll free number the Member/Provider Relations Resource Center to obtain assistance with issue resolution;

(ii) if the issue cannot be resolved with assistance from the Member/Provider Relations Resource Center or from CD-PASS Program Management, the CD-PASS Program Management will submit the dispute to the ADvantage Escalated Issues Unit for resolution. The Escalated Issues Unit will work with the member and provider to reach a mutually agreed upon resolution;

(iii) if the dispute cannot be resolved by the ADvantage Escalated Issues Unit it will be heard by the Ethics of Care Committee. The Ethics of Care Committee will make a final determination with regard to settlement of the dispute;

(iv) at any step of this dispute resolution process the member may request a fair hearing, to appeal the dispute resolution decision.

(K) The CDA/CM and the member prepare an emergency backup/emergency response capability for CD-PASS PSA services in the event a PSA provider of services essential to the individual's health and welfare fails to deliver services. As part of the planning process, the CDA/CM and member define what failure of service or neglect of service tasks would constitute a risk to health and welfare to trigger implementation of the emergency backup. Any of the following may be used in planning for the backup:

(i) Identification of a qualified substitute provider of PSA services and preparation for their quick response to provide backup services when called upon in emergency circumstances (including execution of all qualifying background checks, training and employment processes); and/or,

(ii) Identification of one or more qualified substitute ADvantage agency service providers (Adult Day Care, Personal Care or Nursing Facility Respite provider) and preparation for their quick response to provide backup services when called upon in emergency circumstances.

(L) If the emergency backup fails, the CDA/CM is to request the AA to authorize and facilitate member access to Adult Day Care, Agency Personal Care or Nursing Facility Respite services.

(5) The case manager submits the care plan and service plan to the case management supervisor for review. The

case management supervisor documents the review/approval of the plans within two working days of receipt from the case manager or returns the plans to the case manager with notations of errors, problems, and concerns to be addressed. The case manager re-submits the corrected care plan and service plan to the case management supervisor within two working days. The case management supervisor returns the approved care plan and service plan to the case manager. Within one working day of receiving supervisory approval, the case manager forwards, via postal mail, a legible copy of the care plan and service plan to the AA. Case managers are responsible for retaining all original documents for the member's file at the agency. Only priority service needs and supporting documentation may be faxed to the AA with the word, "PRIORITY" being clearly indicated and the justification attached. "Priority" service needs are defined as services needing immediate authorization to protect the health and welfare of the member and/or avoid premature admission to the nursing facility. Corrections to service conditions set by the AA are not considered to be a priority unless the health and welfare of the member would otherwise be immediately jeopardized and/or the member would otherwise require premature admission to a nursing facility.

(6) Within one working day of notification of care plan and service plan authorization, the case manager communicates with the service plan providers and with the member to facilitate service plan implementation. Within five working days of notification of an initial service plan or a new reassessment service plan authorization, the case manager visits the member, gives the member a copy of the service plan or computer-generated copy of the service plan and evaluates the progress of the service plan implementation. The case manager evaluates service plan implementation on the following minimum schedule:

(A) within 30 calendar days of the authorized effective date of the service plan or service plan addendum amendment; and

(B) monthly after the initial 30 day follow-up evaluation date.

(b) **Authorization of service plans and amendments to service plans.** The ADvantage Administration (AA) authorizes the individual service plan and all service plan amendments for each ADvantage member. When the AA verifies member ADvantage eligibility, plan cost effectiveness, that service providers are ADvantage authorized and SoonerCare contracted, and that the delivery of ADvantage services are consistent with the member's level of care need, the service plan is authorized.

(1) Except as provided by the process described in OAC 317:30-5-761(6), family members may not receive payment for providing ADvantage waiver services. A family member is defined as an individual who is legally responsible for the member (spouse or parent of a minor child).

(2) The OKDHS/ASD may under criteria described in OAC 317:35-15-13 authorize personal care service provision by an Individual PCA (an individual contracted directly with OHCA). Legally responsible family members are not eligible to serve as Individual PCA's.

(3) If the service plan authorization or amendment request packet received from case management is complete and the service plan is within cost effectiveness guidelines, the AA authorizes or denies authorization within five working days of receipt of the request. If the service plan is not within cost-effectiveness guidelines, the plan is referred for administrative review to develop an alternative cost-effective plan or assist the member to access services in an alternate setting or program. If the request packet is not complete, the AA notifies the case manager immediately and puts a "hold" on authorization until the required additional documents are received from case management.

(4) The AA authorizes the service plan by entering the authorization date and assigning a control number that internally identifies the OKDHS staff completing the authorization. Notice of authorization and a computer-generated copy of the authorized plan or a computer-generated copy of the authorized plan are provided to case management. AA authorization determinations are provided to case management within one working day of the authorization date. A service plan may be authorized and implemented with specific services temporarily denied. The AA communicates to case management the conditions for approval of temporarily denied services. The case manager submits revisions for denied services to AA for approval within 5 working days.

(5) For audit purposes (including Program Integrity reviews), the computer-generated copy of the authorized service plan is documentation of service authorization for ADvantage waiver and State Plan Personal Care services. State or Federal quality review and audit officials may obtain a copy of specific service plans with original signatures by submitting a request to the member's case manager.

(c) **Change in service plan.** The process for initiating a change in the service plan is described in this subsection.

(1) The service provider initiates the process for an increase or decrease in service to the member's service plan. The requested changes and justification for them are documented by the service provider and, if initiated by a direct care provider, submitted to the member's case manager. If in agreement, the case manager requests the service changes on a care plan and service plan amendment submitted to the AA within five calendar days of assessed need. The AA authorizes or denies the care plan and service plan changes per 317:35-17-14.

(2) The member initiates the process for replacing Personal Care services with Consumer-Directed Personal Services and Supports (CD-PASS) in geographic areas in which CD-PASS services are available. The member may contact the AA or by calling the toll-free number established to process requests for CD-PASS services.

(3) A significant change in the member's physical condition or caregiver support, one that requires additional goals, deletion of goals or goal changes, or requires a four-hour or more adjustment in services per week,

requires an updated UCAT reassessment by the case manager. The case manager develops an amended or new service plan and care plan, as appropriate, and submits the new amended plans for authorization.

(4) One or more of the following changes or service requests require an Interdisciplinary Team review and service plan goals amendment:

(A) the presence of two or more ADvantage members residing in the same household, or

(B) the member and personal care provider residing together, or

(C) a request for a family member to be a paid ADvantage service provider, or

(D) a request for an Individual PCA service provider.

(5) Based on the reassessment and consultation with the AA as needed, the member may, as appropriate, be authorized for a new service plan or be eligible for a different service program. If the member is significantly improved from the previous assessment and does not require ADvantage services, the case manager obtains the member's dated signature indicating voluntary withdrawal for ADvantage program services. If unable to obtain the member's consent for voluntary closure, the case manager requests assistance from the AA. The AA requests that the OKDHS area nurse initiate a reconsideration of level of care.

(6) Providers of Home and Community Based Services (HCBS) for the member, or those who have an interest in or are employed by a provider of HCBS for the member, must not provide case management or develop the person-centered service plan, except when the State demonstrates that the only willing and qualified entity to provide case management and/or develop person-centered service plans in a geographic area also provides HCBS.

[OAR Docket #15-506; filed 6-12-15]

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

[OAR Docket #15-519]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
317:40-1-1 [AMENDED]
(Reference APA WF # 14-34)
AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, 42 CFR 440.180, 42 CFR 441.301, 42 CFR 441.302, 42 CFR 441.710, and the Director of Human Services; Title 56 Section 162 of the Oklahoma Statutes
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
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Subchapter 1. General Provisions
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January 20, 2015
Register Publication:
32 Ok Reg 544
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15-124
(Reference APA WF # 14-34)
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Developmental Disabilities Services (DDS) policy is revised to comply with state and federal regulations regarding Home and Community-Based Services (HCBS) Waivers for persons with intellectual disabilities or certain persons with related conditions: (1) include timeframes for how long psychological evaluations are considered valid to determine eligibility for DDS HCBS Waiver services; (2) include timeframes for reporting any address changes or other contact information to DHS; and (3) provide timeframes when an individual is removed from the Request for Waiver Services List when the individual fails to respond or does not provide DHS requested information. Without the recommended changes, the State is out of compliance with CMS and may be in risk of losing federal funding.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 1. GENERAL PROVISIONS

317:40-1-1. Home and Community-Based Services (HCBS) Waivers for persons with intellectual disabilities or certain persons with related conditions

(a) **Applicability.** The rules in this Section apply to services funded through Medicaid HCBS Waivers per ~~OAC~~Oklahoma Administrative Code (OAC) 317:35-9-5 and ~~as defined in~~per Section 1915(c) of the Social Security Act. The specific waivers are the In-Home Supports Waiver (IHSW) for Adults, the In-Home Supports Waiver (IHSW) for Children, the Community Waiver, and the Homeward Bound Waiver.

(b) **Program provisions.** Each individual requesting services provided through ~~a~~an HCBS Waiver and his or her family or guardian are responsible for:

(1) accessing, with the assistance of OKDHS staff, all benefits available under Oklahoma's Medicaid State Plan

or other payment sources prior to accessing funding for those same services under a HCBS Waiver program;

(2) cooperating in the determination of medical and financial eligibility, including prompt reporting of changes in income or resources; ~~and~~

(3) choosing between services provided through a HCBS Waiver and institutional care~~.~~; and

(4) reporting to DHS within 30 calendar days of moving any changes in address or other contact information.

(c) **Waiver Eligibility.** To be eligible for Waiver services, an applicant must meet the criteria established in paragraph (1) of this Subsection and the criteria for one of the Waivers established in ~~Subparagraph~~ (A), (B), or (C) of this Subsection.

(1) Services provided through ~~a~~an HCBS Waiver are available to Oklahoma residents meeting SoonerCare eligibility requirements established by law, regulatory authority, and policy within funding available through State or Federal resources. To be eligible for and receive services funded through any of the Waivers listed in ~~subsection~~ (a) of this Section, a person must meet conditions per OAC 317:35-9-5. The individual must be determined financially eligible for SoonerCare per OAC 317:35-9-68. The SoonerCare eligible individual may not simultaneously be enrolled in any other Medicaid Waiver program or receiving services in an institution including a hospital, rehabilitation facility, mental health facility, nursing facility, residential care facility ~~as described in~~per Section 1-819 of Title 63 of Oklahoma Statutes, or Intermediate Care facility for ~~personswith mental retardation (ICF/MR)~~individuals with intellectual disabilities (ICF/IID). The individual may not be receiving ~~DDSD~~Developmental Disabilities Services (DDS) state-funded services, such as the Family Support Assistance Payment, Respite Voucher Program, sheltered workshop services, community integrated employment services, or assisted living without waiver supports per OAC 340:100-5-22.2. The individual must also meet other Waiver-specific eligibility criteria.

(A) **In-Home Supports Waivers.** To be eligible for services funded through the In-Home Supports Waiver (IHSW), a person must:

(i) meet all criteria ~~given~~listed in ~~subsection~~ (c) of this Section; and

(ii) be determined to have a disability and a diagnosis of intellectual disability by the Social Security Administration (SSA); or

(iii) be determined to have a disability, and a diagnosis of intellectual disability as defined in the Diagnostic and Statistical Manual of Mental Disorders by the OHCA Level of Care Evaluation Unit (LOCEU);

(iv) be three years of age or older;

(v) be determined by the OHCA/LOCEU to meet the ~~ICF/MR~~ICF/IID Institutional Level of Care requirements per OAC 317:30-5-122;

(vi) reside in:

(I) the home of a family member or friend;

(II) his or her own home;

(III) ~~an OKDHS Children and Family Services Division (CFSD)~~a DHS Child Welfare Service (CWS) foster home; or

(IV) a ~~CFSD~~CWS group home; and

(vii) have critical support needs that can be met through a combination of non-paid, non-Waiver, and SoonerCare resources available to the individual, and with HCBS Waiver resources ~~that are~~ within the annual per capita Waiver limit agreed between the State of Oklahoma and the Centers for Medicare and Medicaid Services (CMS).

(B) **Community Waiver.** To be eligible for services funded through the Community Waiver, the person must:

(i) meet all criteria ~~given~~listed in ~~subsection~~ (c) of this Section;

(ii) be determined to have a disability and a diagnosis of intellectual disability by the SSA; or

(iii) have an intellectual disability as defined in the Diagnostic and Statistical Manual of Mental Disorders or a related condition by ~~the DDSD~~DDS and ~~to~~ be covered under the State's alternative disposition plan adopted under Section 1919(e)(7)(E) of the Social Security Act; or

(iv) be determined to have a disability and a diagnosis of intellectual disability as defined in the Diagnostic and Statistical Manual of Mental Disorders or the OHCA/LOCEU; and

(v) be three years of age or older; and

(vi) be determined by the OHCA/LOCEU, to meet the ~~ICF/MR~~ICF/IID Institutional Level of Care requirements per OAC 317:30-5-122; and

(vii) have critical support needs that can be met by the Community Waiver and cannot be met by IHSW services or other service alternatives, as determined by the ~~DDSD Division Director~~DDS director or designee.

(C) **Homeward Bound Waiver.** To be eligible for services funded through the Homeward Bound Waiver, the person must:

(i) be certified by the United States District Court for the Northern District of Oklahoma as a member of the plaintiff class in *Homeward Bound et al. v. The Hissom Memorial Center*, Case No. 85-C-437-E;

(ii) meet all criteria for HCBS Waiver services ~~given~~ listed in ~~subsection~~ (c) of this Section; and

(iii) be determined to have a disability and a diagnosis of intellectual disability by SSA; or

(iv) have an intellectual disability as defined in the Diagnostic and Statistical Manual of Mental Disorders or a related condition per OAC 317:35-9-45 by ~~DDSD~~DDS and to be covered under the State's alternative disposition plan adopted under Section 1919(e)(7)(E) of the Social Security Act; or

(v) have a disability as defined in the Diagnostic and Statistical Manual of Mental Disorders by the OHCA/LOCEU; and

(vi) meet ~~the ICF/MR~~ICF/IID Institutional Level of Care requirements per OAC 317:30-5-122 by the OHCA/LOCEU.

(2) The person desiring services through any of the Waivers listed in ~~subsection~~ (a) of this Section participates in diagnostic evaluations and provides information necessary to determine HCBS Waiver services eligibility, including:

(A) a psychological evaluation, by a licensed ~~Psychologist or State staff supervised by a licensed Psychologist, current within 12 months of requested approval date,~~psychologist that includes:

(i) a full scale functional and/or adaptive assessment; and

(ii) a statement of age of onset of the disability; and

(iii) intelligence testing that yields a full scale intelligence quotient.

(I) Intelligence testing results obtained at 16 years of age or older are considered valid of the current status, provided they are compatible with current behavior. Intelligence testing results obtained between 7 to 16 years of age are considered current for four years when the full scale intelligence quotient is less than 40, and for two years when the intelligence quotient is 40 or above.

(II) DDS may require a current psychological evaluation when a significant change of condition, disability, or psychological status is noted;

(B) a social service summary, current within 12 months of requested approval date, that includes a developmental history; and

(C) a medical evaluation current within 90 calendar days of requested approval date; and

(D) a completed ~~ICF/MR~~ICF/IID Level of Care Assessment form (LTC-300); and

(E) proof of disability according to SSA guidelines. If a disability determination ~~had~~has not been made by SSA, ~~the~~ OHCA/LOCEU may make a disability determination using the same guidelines as SSA.

(3) ~~The~~ OHCA reviews the diagnostic reports listed in ~~paragraph~~ (2) of this subsection and makes a determination of eligibility for ~~DDSD~~DDS HCBS Waivers.

(4) For individuals who are determined to have an intellectual disability or a related condition by ~~DDSD~~DDS in accordance with the State's alternative disposition plan adopted under Section 1919(e)(7)(E) of the Social Security Act, ~~DDSD~~DDS reviews the diagnostic reports listed in ~~paragraph~~ (2) of this subsection and, on behalf of the OHCA, makes a determination of eligibility for ~~DDSD~~DDS HCBS Waiver services and ~~ICF/MR~~ICF/IID level of care.

(5) A determination of need for ~~ICF/MR~~ICF/IID Institutional Level of Care does not limit the opportunities of the person receiving services to participate in community services. Individuals are assured of the opportunity to exercise informed choice in the selection of services.

(d) **Request list.** When ~~State DDSD~~state DDS resources are unavailable for new persons to be added to services funded through ~~a~~an HCBS Waiver, persons are placed on a statewide Request for Waiver Services List.

(1) The Request for Waiver Services List is maintained in chronological order, based on the date of receipt of a written request for services on Form 06MP001E, Request for Developmental Disabilities Services. The applicant must submit the required documentation per Form 06MP001E, Request for Developmental Disabilities Services for initial consideration of potential eligibility.

(2) The Request for Waiver Services List for persons requesting services provided through ~~a~~an HCBS Waiver is administered by ~~DDSD~~DDS uniformly throughout the state.

(3) An individual is removed from the Request for Waiver Services List ~~if~~when the individual:

(A) is found to be ineligible for services;

(B) cannot be located by ~~OKDHS~~DHS;

(C) fails to respond or does not provide ~~required~~requested information to ~~OKDHS~~DHS;

(D) is not a resident of the state of Oklahoma at the time of requested Waiver approval date; or

(E) declines an offer of Waiver services

(4) An individual removed from the Request for Waiver Services List due to the inability to locate the individual by DHS, may later submit to DDS a written request to be returned to the Request for Waiver Services List. The individual will be returned at the same chronological place on the Request for Waiver Services List that the individual had prior to removal, provided that the individual was on the list prior to January 1, 2015.

(e) **Applications.** When resources are sufficient for initiation of HCBS Waiver services, ~~DDSD~~DDS ensures action regarding a request for services occurs within 45 calendar days. ~~If~~ When action is not taken within the required 45 calendar days, the applicant may seek resolution ~~as described in~~per OAC 340:2-5.

(1) Applicants are allowed 60 calendar days to provide information requested by ~~DDSD~~ DDS to determine eligibility for services.

(2) ~~If~~When requested information is not provided within 60 calendar days, the applicant is notified that the request ~~has been~~was denied, and the individual is removed from the Request for Waiver Services List.

(f) **Admission protocol.** Initiation of services funded through ~~a~~ an HCBS Waiver occurs in chronological order from the Request for Waiver Services List in accordance with ~~subsection~~ (d) of this Section based on the date of ~~DDSD~~DDS receipt of a completed request for services, as a result of the informed choice of the person requesting services or ~~his or her legal guardian~~the individual acting on the member's behalf,

and upon determination of eligibility, in accordance with ~~subsection~~ (c) of this Section. Exceptions to the chronological requirement may be made when:

(1) an emergency situation exists in which the health or safety of the person needing services, or of others, is endangered, and there is no other resolution to the emergency. An emergency exists when:

(A) the person is unable to care for himself or herself and:

(i) the person's caretaker, as defined in Section 10-103 of Title 43A of the Oklahoma Statutes:

(I) is hospitalized;

(II) has moved into a nursing facility;

(III) is permanently incapacitated; or

(IV) has died; and

(ii) there is no caretaker to provide needed care to the individual; or

(iii) an eligible person is living at a homeless shelter or on the street;

(B) ~~the OKDHS~~DHS finds ~~that~~ the person needs protective services due to experiencing ongoing physical, sexual, or emotional abuse or neglect in his or her present living situation, resulting in serious jeopardy to the person's health or safety;

(C) the behavior or condition of the person needing services is such that others in the home are at risk of being seriously harmed by the person. For example, the person is routinely physically assaultive to the caretaker or others living in the home and sufficient supervision cannot be provided to ensure the safety of those in the home or community; or

(D) the person's medical, psychiatric, or behavioral challenges are such that the person is seriously injuring or harming himself or herself, or is in imminent danger of doing so.

(2) the Legislature has appropriated special funds with which to serve a specific group or a specific class of individuals under the provisions of ~~a~~an HCBS Waiver;

(3) Waiver services are required for people who transition to the community from a public or ~~ICF/MR~~ICF/IID who are children in the State's custody receiving services from ~~OKDHS~~DHS. Under some circumstances Waiver services related to accessibility may be authorized in advance of transition, but may not be billed until the day the member leaves the ~~ICF/MR~~ICF/IID and enters the Waiver;

(4) individuals subject to the provisions of Public Law 100-203 residing in nursing facilities for at least 30 continuous months prior to January 1, 1989,and who are determined by Preadmission Screening and Resident Review (PASRR) evaluation conducted pursuant to the provisions of 42 CFR 483.100 et seq to have an intellectual disability or a related condition, who are covered under the State's alternative disposition plan adopted under Section 1919(e)(7)(E) of the Social Security Act, choose to receive services funded through the Community or Homeward Bound Waiver.

(g) **Movement between ~~DDSD~~DDS HCBS Waiver programs.** A person's movement from services funded through one DDS-administered HCBS Waiver, to services funded through another ~~DDSD-administered~~DDS-administered HCBS Waiver is explained in this subsection.

(1) When a member receiving services funded through the IHSW for children becomes 18 years of age, services through the IHSW for adults become effective.

(2) Change to services funded through the Community Waiver from services funded through the IHSW occurs only when:

(A) a member has critical health and safety support needs that cannot be met by IHSW services, non-Waiver services, or other resources as determined by the ~~DDSD Director~~DDS director or designee; and

(B) funding is available per OAC 317:35-9-5.~~.~~

(3) Change to services funded through the IHSW from services funded through the Community Waiver may only occur when a member's history of annual service utilization has been within the per capita allowance of the IHSW.

(4) When a member served through the Community Waiver has support needs that can be met within the per capita Waiver allowance of the applicable IHSW and through a combination of non-Waiver resources, the individual may choose to receive services through the IHSW.

(h) **Continued eligibility for HCBS Waiver services.** Eligibility for members receiving services provided through the HCBS Waiver is re-determined by the OHCA/LOCEU when a determination of disability has not been made by the Social Security Administration. The OHCA/LOCEU determines categorical relationship to the SoonerCare disabled category according to Social Security Administration guidelines. OHCA/LOCEU also approves level of care per OAC 317:30-5-122 and confirms a diagnosis of intellectual disability as defined in the Diagnostic and Statistical Manual of Mental Disorders. ~~DDSD~~DDS may require a new ~~diagnostic~~psychological evaluation ~~in accordance with paragraph (c)(2) of this subsection~~ and re-determination of eligibility at any time when a significant change of condition, disability, or psychological status ~~determined under paragraph (c)(2) of this Section~~ has been noted.

(i) **HCBS Waiver services case closure.** Services provided through ~~a~~an HCBS Waiver are terminated, when:

(1) ~~when~~ a member or ~~the member's legal guardian~~the individual acting on the member's behalf chooses to no longer receive Waiver services;

(2) ~~when~~ a member is incarcerated;

(3) ~~when~~ a member is financially ineligible to receive Waiver services;

(4) ~~when~~ a member is determined by the Social Security Administration to no longer have a disability qualifying the individual for services under these Waivers;

(5) ~~when~~ a member is determined by the OHCA/LOCEU to no longer be eligible;

(6) ~~when~~ a member moves out of state, or the custodial parent or guardian of a member who is a minor moves out of state;

(7) ~~when~~ a member is admitted to a nursing facility, ~~ICF/MR~~ICF/IID, residential care facility, hospital, rehabilitation facility, or mental health facility for more than 30 consecutive calendar days;

(8) ~~when~~ the guardian of a member who is a minor or adjudicated adult fails to cooperate during the annual review process ~~as described in~~per OAC 340:100-5-50 through 340:100-5-58;

(9) ~~when~~ the guardian of a member who is a minor or adjudicated adult fails to cooperate in the implementation of ~~OKDHS~~DHS policy or service delivery in a manner that places the health or welfare of the member at risk, after efforts to remedy the situation through Adult Protective Services or Child Protective Services have not been effective;

(10) ~~when~~ the member is determined to no longer be SoonerCare eligible; or

(11) ~~when~~ there is sufficient evidence that the member or ~~his/her legal representative~~the individual acting on the member's behalf has engaged in fraud or misrepresentation, failed to use resources as agreed on in the Individual Plan, or knowingly misused public funds associated with these services;

(12) ~~when~~ the member or ~~his/her legal representative~~the individual acting on the member's behalf either cannot be located, has not responded to, or has not allowed case management to complete plan development or monitoring activities as required by policy and the member or ~~his/her legal representative~~the individual acting on the member's behalf:

(A) does not respond to the notice of intent to terminate; or

(B) the response prohibits ~~case management (the case manager)~~the case manager from being able to complete plan development or monitoring activities as required by policy;

(13) ~~when~~ the member or ~~his/her legal representative~~the individual acting on the member's behalf fails to cooperate with the case manager to implement a Fair Hearing decision;

(14) ~~when~~ it is determined that services provided through ~~a~~an HCBS Waiver are no longer necessary to meet the member's needs and professional documentation provides assurance that the member's health, safety, and welfare can be maintained without Waiver supports;

(15) ~~when~~ the member or ~~his/her legal representative~~the individual acting on the member's behalf fails to cooperate with service delivery;

(16) ~~when~~ a family member, ~~authorized representative~~the individual acting on the member's behalf, other individual in the member's household, or persons who routinely visit, pose a threat of harm or injury to provider staff or official DHS representatives ~~of OKDHS~~; or

(17) ~~when~~ a member no longer receives a minimum of one Waiver service per month and ~~DDSD~~DDS is unable to monitor member on a monthly basis.

(j) **Reinstatement of services.** Waiver services are reinstated when:

(1) the situation resulting in case closure of a Hissom class member is resolved;

(2) a member is incarcerated for 90 calendar days or less;

(3) a member is admitted to a nursing facility, ~~ICF/MR~~ICF/IID, residential care facility, hospital, rehabilitation facility, or mental health facility for 90 calendar days or less; or

(4) a member's SoonerCare eligibility is re-established within 90 calendar days of the date of SoonerCare ineligibility.

[OAR Docket #15-519; filed 6-12-15]

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

[OAR Docket #15-526]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
317:40-1-3 [NEW]
Subchapter 5. Member Services
Part 9. Service Provisions
317:40-5-100 [AMENDED]
317:40-5-103 [AMENDED]
Part 11. Other Community Residential Supports
317:40-5-152 [AMENDED]
Subchapter 7. Employment Services Through Home and Community-Based Services Waivers
317:40-7-15 [AMENDED]
(Reference APA WF # 14-46B)
AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, 42 CFR 440.180, 42 CFR 441.301, 42 CFR 441.302, 42 CFR 441.710, and the Director of Human Services; Title 56 Section 162 of the Oklahoma Statutes
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
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ANALYSIS:
The proposed revisions are to implement policy changes recommended during the Oklahoma Department of Human Services (DHS) Developmental Disabilities Services (DDS) annual policy review process. The recommendations will also assist DDS with being in full compliance with

the new federal regulation for Home and Community-Based Services with regard to members and their settings.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 1. GENERAL PROVISIONS

317:40-1-3. Requirements for Home and Community-Based settings

(a) The Oklahoma Department of Human Services Developmental Disabilities Services Home and Community-Based Services (HCBS) Waiver settings have the following qualities defined in federal regulation per 42 CFR § 441.301(c)(4) based on the needs of the individual defined in his or her Individual Plan (Plan).

(1) The setting is integrated and supports full access of individuals receiving HCBS Waivers to the greater community, including opportunities to:

(A) seek employment and work in competitive integrated settings;

(B) engage in community life;

(C) control personal resources; and

(D) receive services in the community, to the same degree as individuals not receiving Medicaid HBCS Waiver Services.

(2) The setting is selected by the member from options including non-disability settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and based on individual needs and preferences.

(3) For residential settings, the member must have income available for room and board.

(4) The setting ensures the member's rights of privacy, dignity, respect, and freedom from coercion and restraint.

(5) The setting optimizes individual initiative, autonomy, and independence in making life choices including, but not limited to:

(A) daily activities;

(B) the physical environment; and

(C) with whom to interact.

(6) The setting facilitates individual choice regarding services and supports, including who provides them.

(b) In a provider-owned or controlled residential setting, in addition to the attributes specified above, the additional conditions listed in (1) through (8) of this subsection must be met.

(1) The unit or dwelling is a specific, physical place, owned, rented, or occupied under a legally enforceable agreement by the member receiving services.

(2) The member has the same responsibilities and protections from eviction, that tenants have per the Residential Landlord and Tenant Act, 41 O.S. § 101, et seq.

(3) In settings where landlord tenant laws do not apply, the provider agency completes a lease, residency agreement, or other form of written agreement for each member. The document provides protections that address eviction processes and appeals comparable to those provided in the Residential Landlord and Tenant Act, 41 O.S. § 101, et seq.

(4) Each member has privacy in his or her sleeping or living unit, where:

(A) units have entrance doors lockable by the member, with only appropriate staff having keys to doors;

(B) members sharing units have a choice of roommates; and

(C) members have freedom to furnish and decorate his or her sleeping or living units within the lease or other agreement.

(5) Each member has the freedom and support to control his or her own schedules, activities, and access to food at any time.

(6) Each member may have visitors whenever he or she chooses.

(7) The setting is physically accessible to the member.

(8) Any modifications of the additional conditions specified in this subsection, must be supported by a specific, assessed need, and justified in the person-centered Plan and includes:

(A) an identified individualized assessed need;

(B) documentation of the positive interventions and supports used prior to any modifications to the person-centered plan;

(C) documentation of less intrusive methods tried, including those that did not work;

(D) a clear description of the condition, proportionate to the specific assessed need;

(E) regular collection and review of data to measure the ongoing effectiveness of the modification;

(F) established time limits for periodic reviews to determine if the modification continues to be necessary or can be terminated;

(G) the informed consent of the member; and

(H) an assurance the interventions and supports will cause no harm to the member.

(c) Any setting that isolates members from the broader community of individuals not receiving HCBS is not considered an HCBS.

(1) Settings that are not HCBS per 42 CFR § 441.301(c)(5)(v) include:

(A) a nursing facility;

(B) an institution for mental diseases;

(C) an intermediate care facility for individuals with intellectual disabilities;

(D) a hospital; or

(E) any other locations with qualities of an institutional setting per 42 CFR § 441.301(c)(5)(v).

SUBCHAPTER 5. MEMBER SERVICES

PART 9. SERVICE PROVISIONS

317:40-5-100. Assistive technology (AT) devices and services

(a) **Applicability.** The rules in this Section apply to ~~assistive technology (AT)~~AT services and devices authorized by the Oklahoma Department of Human Services ~~(OKDHS)~~(DHS) Developmental Disabilities Services ~~Division (DDSD)~~DDS through Home and Community Based Services (HCBS) Waivers.

(b) **General information.**

(1) AT devices include the purchase, rental, customization, maintenance, and repair of devices, controls, and appliances. AT devices include:

(A) visual alarms;

(B) telecommunication devices (TDDS);

(C) telephone amplifying devices;

(D) other devices for protection of health and safety of members who are deaf or hard of hearing;

(E) tape recorders;

(F) talking calculators;

(G) specialized lamps;

(H) magnifiers;

(I) braille writers;

(J) braille paper;

(K) talking computerized devices;

(L) other devices for protection of health and safety of members who are blind or visually impaired;

(M) augmentative and alternative communication devices including language board and electronic communication, devices;

(N) competence based cause and effect systems, such as switches;

(O) mobility and positioning devices including:

(i) wheelchairs;

(ii) travel chairs;

(iii) walkers;

(iv) positioning systems;

(v) ramps;

(vi) seating systems;

(vii) standers;

(viii) lifts;

(ix) bathing equipment;

(x) specialized beds; and

(xi) specialized chairs; ~~and~~

(P) orthotic and prosthetic devices, including:

(i) braces;

(ii) prescribed modified shoes; and

(iii) splints; ~~and~~

(Q) environmental controls or devices;

(R) items necessary for life support, and devices necessary for the proper functioning of such items, including durable and non-durable medical equipment not available through SoonerCare~~.~~; and

(S) devices for the protection of the member's health and safety.

(2) AT services include:

(A) sign language interpreter services for members who are deaf;

(B) reader services;

(C) auxiliary aids;

(D) training the member and provider in the use and maintenance of equipment and auxiliary aids;

(E) repair of AT devices; and

(F) evaluation of the member's AT needs ~~of a member~~.

(3) AT devices and services must be included in the member's Individual Plan (IP) and arrangements for this HCBS service must be made through the member's case manager.

(4) AT devices are provided by vendors with a Durable Medical Equipment (DME) contract with the Oklahoma Health Care Authority (OHCA).

(5) AT devices and services are authorized in accordance with requirements of The Oklahoma Central Purchasing Act, other applicable statutory provisions, ~~OAC~~Oklahoma Administrative Code OAC 580:15 and ~~OKDHS~~DHS approved purchasing procedures.

(6) AT services are provided by an appropriate professional services provider with a current HCBS contract with OHCA and current, unrestricted licensure and certification with their professional board, ~~if~~when applicable.

(7) AT devices or services may be authorized when the device or service:

(A) has no utility apart from the needs of the person receiving services;

(B) is not otherwise available through SoonerCare, an AT retrieval program, Oklahoma Department of Rehabilitative Services, or any other third party or known community resource;

(C) has no less expensive equivalent that meets the member's needs;

(D) is not solely for family or staff convenience or preference;

(E) is based on the assessment and Personal Support Team (Team) consideration of the member's unique needs;

(F) is of direct medical or remedial benefit to the member;

(G) enables the member to maintain, increase, or improve functional capabilities;

(H) is supported by objective documentation included in a professional assessment, except as specified per OAC 317:40-5-100;

(I) is within the scope of assistive technology per OAC 317:40-5-100; ~~and~~

(J) is the most appropriate and cost effective bid if applicable~~.~~; and

(K) exceeds a cost of $50. AT devices or services with a cost of $50 or less, are not authorized through ~~DDSD~~DDS HCBS Waivers.

(8) The homeowner must sign a written agreement for any AT equipment that attaches to the home or property.

(c) **Assessments.** Assessments for AT devices or services are performed by a licensed professional service

~~provider(s)~~provider and reviewed by other providers whose services may be affected by the type of device selected. A licensed professional must:

(1) determine whether the ~~person's~~member's identified outcome can be accomplished through the creative use of other resources, such as:

(A) household items or toys;

(B) equipment loan programs;

(C) low-technology devices or other less intrusive options; or

(D) a similar, more cost-effective device~~.~~;

(2) recommend the most appropriate AT based on the member's:

(A) present and future needs, especially for members with degenerative conditions;

(B) history of use of similar AT, and ability to use the device currently and for at least the foreseeable future ~~(no less than 5 years)~~no less than 5 years; and

(C) outcomes~~.~~;

(3) complete an assessment, including a decision making review and device trial that provides supporting documentation for purchase, rental, customization, or fabrication of an AT device. Supporting documentation must include:

(A) a review of the device considered;

(B) availability of the device rental with discussion of advantages and disadvantages;

(C) how frequently, and in what situations the device will be used in daily activities and routines;

(D) how the member and caregiver(s) will be trained to safely use the AT device; and

(E) the features and specifications of the device ~~that are~~ necessary for the member, including rationale for why other alternatives are not available to meet the member's needs~~.~~; and

(4) provide a current, unedited videotape or pictures of the ~~person~~ member using the device, including the time frames of the trials recorded, upon request by ~~DDSD~~DDS staff.

(d) **Authorization of repairs, or replacement of parts.** Repairs to AT devices, or replacement of device parts, do not require a professional assessment or recommendation. ~~DDSD~~DDS area office resource development staff with assistive technology experience may authorize repairs and replacement of parts for previously recommended assistive technology.

(e) **Retrieval of assistive technology devices.** When devices are no longer needed by a member, ~~OKDHS/DDSD~~DHS DDS staff may retrieve the device.

(f) **Team decision-making process.** The member's ~~Personal Support~~ Team reviews the licensed professional's assessment and decision-making review. The Team ensures the recommended AT:

(1) is needed by the member to achieve a specific, identified functional outcome~~;~~.

(A) A functional outcome, in this Section, means the activity is meaningful to the member, occurs on a frequent basis, and would require assistance from others, if the member could not perform the activity independently, such as self-care, assistance with eating, or transfers.

(B) Functional outcomes must be reasonable and necessary given a member's age,~~the~~ diagnosis, and abilities~~.~~;

(2) allows the member receiving services to:

(A) improve or maintain health and safety;

(B) participate in community life;

(C) express choices; or

(D) participate in vocational training or employment;

(3) will be used frequently or in a variety of situations;

(4) will ~~fit~~ easily fit into the member's lifestyle and work place;

(5) is specific to the member's unique needs; and

(6) is not authorized solely for family or staff convenience.

(g) **Requirements and standards for AT devices and service providers.**

(1) Providers guarantee devices, work, and materials for one calendar year, and supply necessary follow-up evaluation to ensure optimum usability.

(2) Providers ensure a licensed occupational therapist, physical therapist, speech therapist, or rehabilitation engineer ~~evaluate~~evaluates the need for AT, and individually ~~customize~~customizes AT devices as needed.

(h) **Services not covered through AT devices and services.** Assistive technology devices and services do not include~~;~~:

(1) trampolines;

(2) hot tubs;

(3) bean bag chairs;

(4) recliners with lift capabilities;

(5) computers except as adapted for individual needs as a primary means of oral communication and approved per OAC 317:40-5-100;

(6) massage tables;

(7) educational games and toys; or

(8) generators.

(i) **Approval or denial of AT.** ~~DDSD~~DDS approval, conditional approval for pre-determined trial use, or denial of the purchase, rental, or lease/purchase of the AT is determined per OAC 317:40-5-100.

(1) The ~~DDSD~~DDS case manager sends the AT request to designated ~~DDSD~~DDS area office resource development staff with AT experience. The request must include:

(A) the licensed professional's assessment and decision making review;

(B) a copy of the Plan of Care (POC);

(C) documentation of current Team consensus, including consideration of issues per OAC 317:40-5-100; and

(D) all additional documentation to support the need for the ~~assistive technology~~AT device or service.

(2) The designated area office resource development staff, with AT experience, approves or denies the AT request when the device ~~has a cost~~costs less than $2500~~, and the POC is below the State Office reviewer limit based on~~

~~the scope of the program, as explained in subsection (b) of this Section~~.

(3) The State Office programs manager for AT approves or denies the AT request when the device has a cost ~~less than~~of $2500~~,~~or more~~and the POC is above the area office reviewer limit based on the scope of the program, as explained in subsection (b) of this Section~~.

(4) Authorization for purchase or a written denial is provided within ~~ten working~~10 business days of receipt of a complete request.

(A) If the AT is approved, a letter of authorization is issued.

(B) If additional documentation is required by the area office resource development staff with AT experience, to authorize the recommended AT, the request packet is returned to the case manager for completion.

(C) ~~If~~When necessary, the case manager ~~will contact~~ contacts the licensed professional to request the additional documentation ~~and the licensed professional will supply further documentation~~.

(D) The authorization of a $2,500 or more AT ~~that is $2,500 or more~~ is ~~performed as in paragraph~~completed per (2) of this subsection, except that the area office resource development staff with AT experience:

(i) solicits three bids for the AT;

(ii) submits the AT request, bids, and other relevant information to the ~~DDSD~~DDS State Office AT programs manager within five ~~working~~business days of receipt of the required bids; and

(iii) the State Office AT programs manager or designee issues a letter of authorization, a written denial, or a request for additional information within five ~~working~~business days of receipt of all required documentation for the AT.

(j) **Approval of vehicle adaptations.** Vehicle adaptations are assessed and approved per OAC 317:40-5-100. In addition, the requirements in ~~this paragraph~~(1) through (3) of this subsection must be met.

(1) The vehicle to be adapted must be owned or in the process of being purchased by the member receiving services or his or her family.

(2) The AT request must include a certified mechanic's statement that the vehicle and adaptations are mechanically sound.

(3) Vehicle adaptations are limited to one vehicle in a ~~ten~~10-calendar year period per member. Authorization for more than one vehicle adaptation in a 10-year period must be approved by the ~~DDSD~~DDS division administrator or designee.

(k) **Denial.** Procedures for denial of an AT device or service are described in ~~this paragraph~~(1) through (3) of this subsection.

(1) The person denying the AT request provides a written denial, to the case manager citing the reason for denial per ~~policy~~OAC 317:40-5-100.

(2) The case manager sends DHS FORM 06MP004E, the Notice of Action, ~~OKDHS form 06MP004E,~~ to the member and his or her family or guardian.

(3) Denial of ~~assistive technology~~AT services may be appealed through the ~~OKDHS~~DHS hearing process, per OAC 340:2-5.

(l) **Return of an AT device.** ~~If~~When, during a trial use period or rental of a device, the therapist or Team including the licensed professional ~~if~~when available, who recommended the AT, determines the device is not appropriate, the licensed professional sends a brief report describing the reason(s) for the change of device recommendation to the ~~DDSD~~DDS case manager. The case manager forwards the report to the designated area office resource development staff, who arranges for the return of the equipment to the vendor or manufacturer.

(m) **Rental of AT devices.** AT devices are rented when the licensed professional or area office resource development staff with AT experience determines rental of the device is more cost effective than ~~purchase of~~purchasing the device or the licensed professional recommends a ~~trail~~trial period to determine if the device meets the member's needs ~~of the member~~.

(1) The rental period begins on the date the manufacturer or vendor delivers the equipment to the member, unless otherwise stated in advance by the manufacturer or vendor.

(2) Area office resource development staff with AT experience monitor use of equipment during the rental agreement for:

(A) cost effectiveness of the rental time frames;

(B) conditions of renewal; and

(C) the Team's, including the licensed professional, re-evaluation of the member's need for the device per OAC 317:40-5-100.

(3) Rental costs are applied toward the purchase price of the device whenever such option is available from the manufacturer or vendor.

(4) ~~If~~When a device is rented for a trial use period, the Team, including the licensed professional, decides within 90 calendar days whether:

(A) the equipment meets the member's needs; and

(B) to purchase the equipment or return it.

(n) **Assistive Technology Committee.** The committee reviews equipment requests when deemed necessary by the ~~OKDHS/DDSD state office assistive technology programs manager~~DHS DDS State Office programs manager for AT.

(1) The AT committee is comprised of:

(A) ~~DDSD~~DDS professional staff members of the appropriate therapy;

(B) ~~DDSD~~DDS AT ~~state office~~State Office programs manager;

(C) the ~~DDSD~~DDS area manager or designee; and

(D) an AT expert not employed by ~~OKDHS~~DHS.

(2) The AT committee performs a paper review, providing technical guidance, oversight, and consultation.

(3) The AT committee may endorse or recommend denial of a device or service, based on criteria ~~given~~provided in this Section. Any endorsement or denial includes a written rationale for the decision and, if necessary, an

alternative ~~solution(s)~~solution, directed to the case manager within 20 ~~working~~business days of the receipt of the request. Requests reviewed by the AT committee result in suspension of time frames specified ~~in~~per OAC 317:40-5-100.

317:40-5-103. Transportation

(a) **Applicability.** The rules in this Section apply to transportation services provided through the Oklahoma Department of Human Services ~~(OKDHS)~~DHS, Developmental Disabilities Services ~~Division (DDSD)~~DDS Home and Community Based Services (HCBS) Waivers.

(b) **General Information.** Transportation services include adapted, non-adapted, and public transportation.

(1) Transportation services are provided to promote inclusion in the community, access to programs and services, and participation in activities to enhance community living skills. Members are encouraged to utilize natural supports or community agencies that can provide transportation without charge before accessing transportation services.

(2) Services include, but are not limited to, transportation to and from medical appointments, work or employment services, recreational activities, and other community activities within the number of miles authorized in the Plan of Care.

(A) Adapted or non-adapted transportation may be provided for each eligible person~~; or~~.

(B) Public transportation may be provided up to a maximum of $5,000 per Plan of Care year. The ~~director of DDSD~~DDS director or designee may approve requests for public transportation services totaling more than $5,000 per year when public transportation is the most cost-effective option. For the purposes of this Section, public transportation is defined as:

(i) services, such as an ambulance when medically necessary, a bus, or a taxi; or

(ii) a transportation program operated by the member's employment services or day services provider.

(3) Transportation services must be included in the member's Individual Plan (Plan) and arrangements for this service must be made through the member's case manager.

(4) Authorization of Transportation Services is based on:

(A) Personal Support Team(Team) consideration, per OAC 340:100-5-52, of the unique needs of the person and the most cost effective type of transportation services that meets the member's need, ~~in accordance with subsection~~per (d) of this Section; and

(B) the scope of transportation services as explained in this Section.

(c) **Standards for transportation providers.** All drivers employed by contracted transportation providers must have a valid and current Oklahoma driver license, and the vehicle(s) must meet applicable local and state requirements for vehicle licensure, inspection, insurance, and capacity.

(1) The provider must ensure that any vehicle used to transport members:

(A) meets the ~~needs of the member~~member's needs;

(B) is maintained in a safe condition;

(C) has a current vehicle tag; and

(D) is operated in accordance with local, state, and federal law, regulation, and ordinance.

(2) The provider maintains liability insurance in an amount sufficient to pay for injuries or loss to persons or property occasioned by negligence or malfeasance by the agency, its agents, or employees.

(3) ~~Regular maintenance and repairs of vehicles are the responsibility of the transportation provider. Providers of adapted transportation services are also responsible for maintenance and repairs of modifications made to vehicles. Providers of non-adapted transportation with a vehicle modification funded through HCBS assistive technology services may have repairs authorized per OAC 317:40-5-100.~~The provider ensures all members wear safety belts during transport.

(4) ~~Providers must maintain documentation fully disclosing the extent of services furnished that specifies:~~

~~(A) the service date;~~

~~(B) the location and odometer mileage reading at the starting point and destination;~~

~~(C) the name of the member transported; and~~

~~(D) the purpose of the trip.~~Regular maintenance and repairs of vehicles are the responsibility of the transportation provider. Providers of adapted transportation services are also responsible for maintenance and repairs of modifications made to vehicles. Providers of non-adapted transportation with a vehicle modification funded through HCBS assistive technology services may have repairs authorized per OAC 317:40-5-100.

(5) ~~A family member, including a family member living in the same household, of an adult member may establish a contract to provide transportation services to:~~

~~(A) work or employment services;~~

~~(B) medical appointments; and~~

~~(C) other activities identified in the Individual Plan as necessary to meet the needs of the member, as defined in OAC 340:100-3-33.1.~~Providers must maintain documentation, fully disclosing the extent of services furnished that specifies the:

(A) service date;

(B) location and odometer mileage reading at the starting point and destination;

(C) name of the member transported; and

(D) purpose of the trip.

(6) ~~Individual transportation providers must provide to the DDSD Area Office verification of vehicle licensure, insurance and capacity before a contract may be established, and updated verification of each upon expiration. Failure to provide updated verification of current and valid Oklahoma driver license, vehicle licensure, and as applicable may result in cancellation of the contract.~~A family

member, including a family member living in the same household, of an adult member may establish a contract to provide transportation services to:

(A) work or employment services;

(B) medical appointments; and

(C) other activities identified in the Plan as necessary to meet the needs of the member, per OAC 340:100-3-33.1.

(7) Individual transportation providers must provide to the DDS area office verification of vehicle licensure, insurance and capacity before a contract may be established, and updated verification of each upon expiration. Failure to provide updated verification of a current and valid Oklahoma driver license and/or vehicle licensure may result in cancellation of the contract.

(d) **Services not covered.** Services that cannot be claimed as transportation services include:

(1) services not approved by the Team;

(2) services not authorized by the Plan of Care;

(3) trips that have no specified purpose or destination;

(4) trips for family, provider, or staff convenience;

(5) transportation provided by the member;

(6) transportation provided by the member's spouse;

(7) transportation provided by the biological, step or adoptive parents of the member or legal guardian, when the member is a minor;

(8) trips when the member is not in the vehicle;

(9) transportation claimed for more than one member per vehicle at the same time or for the same miles, except public transportation;

(10) transportation outside ~~the State of~~ Oklahoma unless:

(A) the transportation is provided to access the nearest available medical or therapeutic service; or

(B) advance written approval is given by the ~~DDSD~~DDS area manager or designee;

(11) services ~~which~~that are mandated to be provided by the public schools pursuant to the Individuals with Disabilities Education Act;

(12) transportation that occurs during the performance of the member's paid employment, even if the employer is a contract provider; or

(13) transportation when a closer appropriate location was not selected.

(e) **Assessment and Team process.** At least annually, the Team addresses the member's transportation needs. The Team determines the most appropriate means of transportation based on the:

(1) present needs of the member. When addressing the possible need for adapted transportation, the Team considers the needs of the member only. The needs of other individuals living in the same household are considered separately;

(2) member's ability to access public transportation services; and

(3) the availability of other transportation resources including natural supports, and community agencies.

(f) **Adapted Transportation.** Adapted transportation may be transportation provided in modified vehicles with wheelchair or stretcher safe travel systems or lifts that meet medical needs of the member that cannot be met with the use of a standard passenger vehicle, including a van when the modification to the vehicle was not funded through HCBS assistive technology service and is owned or leased by the ~~DDSD~~DDS HCBS provider agency.

(1) Adapted transportation is not authorized when a provider agency leases an adapted vehicle from a member or a member's family.

(2) Exceptions to receive adapted transportation services for modified vehicles other than those with wheelchair/stretcher safe travel systems and lifts may be authorized by the ~~DDSD program~~DDS programs manager for transportation services when documentation supports the need, and there is evidence the modification costs exceeded $10,000. All other applicable requirements of OAC 317:40-5-103 must be met.

(3) Adapted transportation services do not include vehicles with modifications including, but not limited to:

(A) restraint systems;

(B) plexi-glass windows;

(C) barriers between the driver and the passengers;

(D) turney seats; and

(E) seat belt extenders.

(4) The Team determines if the member needs adapted transportation according to:

(A) the member's need for physical support when sitting;

(B) the member's need for physical assistance during transfers from one surface to another;

(C) the portability of the member's wheelchair;

(D) associated health problems the member may have; and

(E) less costly alternatives to meet the need.

(5) The transportation provider and the equipment vendor ensure that requirements of the Americans with Disabilities Act are met.

(6) The transportation provider ensures ~~that~~ all staff assisting with transportation ~~have~~has been trained according to the requirements specified by the Team and the equipment manufacturer.

(g) **Authorization of transportation services.** The limitations given in this subsection include the total of all transportation units on the Plan of Care, not ~~just~~only the units authorized for the identified residential setting ~~identified~~.

(1) Up to 12,000 units of transportation services may be authorized in a member's Plan of Care per OAC 340:100-3-33 and OAC 340:100-3-33.1.

(2) When there is a combination of non-adapted transportation and public transportation on a Plan of Care, the total cost for transportation cannot exceed the cost for non-adapted transportation services at the current non-adapted transportation reimbursement rate multiplied by 12,000 miles for the Plan of Care year.

(3) The DDS area manager or designee may approve:

(A) up to 14,400 miles per Plan of Care year for people who have extensive needs for transportation services; and

(B) a combination of non-adapted transportation and public transportation on a Plan of Care, when the total cost for transportation does not exceed the cost for non-adapted transportation services at the current, non-adapted transportation reimbursement rate multiplied by 14,400 miles for the Plan of Care year.

(4) The DDS division director or designee may approve:

(A) transportation services in excess of 14,400 miles per Plan of Care year in extenuating situations when person-centered planning ~~has~~ identified specific needs ~~which~~that require additional transportation for a limited period; or

(B) any combination of public transportation services with adapted or non-adapted; or

(C) public transportation services in excess of ~~$5000~~$5,000 when ~~this~~it is the most cost effective service option for necessary transportation.

PART 11. OTHER COMMUNITY RESIDENTIAL SUPPORTS

317:40-5-152. Group home services for persons with an intellectual disability or certain persons with related conditions

(a) **General Information.** Group homes provide a congregate living arrangement offering up to 24-hour per day supervision, supportive assistance, and training in daily living skills to persons who are eligible and 18 years of age or older. Upon approval of the Oklahoma Department of Human Services ~~(OKDHS)~~DHS Developmental Disabilities Services ~~Division (DDSD)~~DDS director or designee, persons younger than 18 years of age may be served.

(1) Group homes ensure members reside and participate in the community. Services are provided in homes located in close proximity to generic community services and activities.

(2) Group homes must be licensed by ~~DDSD in accordance with~~ DHS per Section 1430.1 et seq. of Title 10 of the Oklahoma Statutes.

(3) Residents of group homes receive no other form of residential supports.

(4) Habilitation training specialist (HTS) services or homemaker services for residents of group homes may only be approved ~~only~~ by the ~~DDSD~~DDS director or designee ~~to resolve a temporary emergency when no other resolution exists.~~:

(A) for a resident of a group home to resolve a temporary emergency when no other resolution exists; or

(B) for a resident of a community living group home when the resident's needs are so extensive that additional supports are needed for identified specific activities; and

(C) weekly average of 56 hours of direct contact staff must be provided to the resident before HTS services may be approved.

(b) **Minimum provider qualifications.** Approved providers must have a current contract with the Oklahoma Health Care Authority (OHCA) to provide ~~DDSD~~DDS Home and Community-Based Services (HCBS) ~~Waiver~~ for persons with an intellectual disability or related conditions.

(1) Group home providers must have a completed and approved application to provide ~~DDSD~~DDS group home services.

(2) Group home staff must:

(A) complete the ~~OKDHS-DDSD-sanctioned~~DHS DDS-sanctioned training curriculum per OAC 340:100-3-38; and

(B) fulfill requirements for pre-employment screening per OAC 340:100-3-39.

(c) **Description of services.**

(1) Group home services:

(A) meet all applicable requirements of OAC 340:100; and

(B) are provided in accordance with each member's Individual Plan (IP) developed per OAC 340:100-5-50 through 340:100-5-58.

(i) Health care services are secured for each member per OAC 340:100-5-26.

(ii) Members are offered recreational and leisure activities maximizing the use of generic programs and resources, including individual and group activities.

(2) Group home providers:

(A) follow protective intervention practices per OAC 340:100-5-57 and 340:100-5-58;

(B) in addition to the documentation required per OAC 340:100-3-40, must maintain:

(i) staff time sheets that document the hours each staff was present and on duty in the group home; and

(ii) documentation of each member's presence or absence on the daily attendance form provided by ~~DDSD~~DDS; and

(C) ensure program coordination staff (PCS) meet staff qualifications and supervise, guide, and oversee all aspects of group home services per OAC 340:100-5-22.6 and 340:100-6, as applicable.

(d) **Coverage limitations.** Group home services are provided up to 366 days per year.

(e) **Types of group home services.** ~~There are three~~Three types of group home services are provided through HCBS Waivers.

(1) **Traditional group homes.** Traditional group homes serve no more than 12 members per OAC 340:100-6.

(2) **Community living homes.** Community living homes serve no more than 12 members.

(A) Members who receive community living home services:

(i) have needs that cannot be met in a less structured setting; and

(ii) require regular, frequent, and sometimes constant assistance and support to complete daily living skills, such as bathing, dressing, eating, and toileting; or

(iii) require supervision and training in appropriate social and interactive skills, due to on-going behavioral issues to remain included in the community.

(B) Services offered in a community living home include:

(i) 24-hour awake supervision when a member's IP indicates it is necessary; and

(ii) program supervision and oversight including hands-on assistance in performing activities of daily living, transferring, positioning, skill-building, and training.

(C) Services may be approved for individuals in a traditional group home at the community living service rate ~~if~~when the member has had a change in health status or behavior and meets the requirements to receive community living home services. Requests to receive community living home services are sent to the ~~DDSD~~DDS Community Services Residential Unit.

(3) **Alternative group homes.** Alternative group homes serve no more than four members who have evidence of behavioral or emotional challenges in addition to an intellectual disability and require extensive supervision and assistance in order to remain in the community.

(A) Members who receive alternative group home services must meet criteria per in OAC 340:100-5-22.6.

(B) A determination must be made by the ~~DDSD~~DDS Community Services Unit that alternative group home services are appropriate.

SUBCHAPTER 7. EMPLOYMENT SERVICES THROUGH HOME AND COMMUNITY-BASED SERVICES WAIVERS

317:40-7-15. Service requirements for employment services through Home and Community-Based Services Waivers

(a) The Oklahoma Department of Human Services (DHS) Developmental Disabilities Services ~~Division (DDSD)~~(DDS) case manager, member, a member's family or, ~~if~~when applicable, legal guardian, and provider develop a preliminary plan of services including the:

(1) site and amount of the services to be offered;

(2) types of services to be delivered; and

(3) expected outcomes.

(b) To promote community integration and inclusion, employment services are only delivered in non-residential sites.

(1) Employment services through Home and Community-Based Services (HCBS) Waivers cannot be reimbursed ~~if~~when those services occur in the residence or property of the member or provider-paid staff, including garages and sheds, whether ~~or not~~ the garage or shed is attached to the home or not.

(2) No exceptions to Oklahoma Administrative Code (OAC)~~OAC~~ 317:40-7-15(b) are authorized.

(c) The service provider is required to notify the ~~DDSD~~DDS case manager in writing when the member:

(1) is placed in a new job;

(2) loses his or her job. A Personal Support Team (Team) meeting must be held ~~if~~when the member loses the job;

(3) experiences significant changes in the community-based ~~schedule~~ or employment schedule; or

(4) experiences other circumstances, per OAC 340:100-3-34.

(d) The provider submits ~~Oklahoma Department of Human Services (OKDHS)~~a DHS Provider Progress Report per OAC 340:100-5-52, for each member receiving services.

(e) The cost of a member's employment services, excluding transportation and state-funded services per OAC 340:100-17-30, cannot exceed ~~$25,000~~$27,000 per Plan of Care year.

(f) Each member receiving residential supports per OAC 340:100-5-22.1, or group home services is employed for 30 hours per week or receives a minimum of 30 hours of employment services, each week, excluding transportation to and from the member's residence.

(1) Thirty-hours of employment service each week ~~can~~may be a combination of community-based services, center-based services, employment training specialist (ETS) intensive training services, stabilization services, and job coaching services. Center-based services cannot exceed 15 hours per week for members receiving services through the Homeward Bound Waiver.

(2) Less than 30 hours of employment activities per week requires approval per OAC 317:40-7-21.

[OAR Docket #15-526; filed 6-12-15]

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

[OAR Docket #15-515]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 5. Member Services
Part 1. Agency Companion Services
317:40-5-3 [AMENDED]
317:40-5-4 [REVOKED]
317:40-5-5 [AMENDED]
317:40-5-6 [AMENDED]
317:40-5-9 [REVOKED]
317:40-5-10 [REVOKED]
317:40-5-11 [AMENDED]
317:40-5-13 [AMENDED]
Part 3. Guidelines to Staff

317:40-5-40 [AMENDED]
(Reference APA WF # 14-23)
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317:40-5-6. [AMENDED]
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n/a
ANALYSIS:
Developmental Disabilities Services (DDS) policy is revised to comply with 29 CFR 552.109 regarding domestic service employees employed by third-party employers, or employers other than the individual receiving services, or his or her family, or household. The regulation precludes third party employers from claiming the companion exemption.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 5. MEMBER SERVICES

PART 1. AGENCY COMPANION SERVICES

317:40-5-3. Agency companion services

(a) Agency companion services (ACS) are:

(1) ~~are~~ provided by agencies that have a provider agreement with the Oklahoma Health Care Authority (OHCA);

(2) ~~provide~~provided by independent contractors of the provider agency and provide a shared ~~a~~ living arrangement developed to meet the specific needs of the member that includes ~~a live-in companion providing~~ supervision, supportive assistance, and training in daily living skills, and integrates the member into the shared experiences of a family~~provided~~ in a ~~shared~~ home owned or rented by the ~~member,~~ companion~~, or in a mutually rented or owned home~~;

(3) ~~are~~ available to members 18 years of age or older who are eligible for services through Community or Homeward Bound Waivers. Persons under ~~the age of~~ 18 years of age may be served with approval from the ~~DDSD~~Oklahoma Department of Human Services Developmental Disabilities Services (DDS) director or designee;

(4) ~~are~~ based on the member's need for residential services per ~~OAC~~Oklahoma Administrative Code(OAC) 340:100-5-22 and support as described in the member's Individual Plan (Plan), per OAC 340:100-5-50 through 340:100-5-58.

(b) An agency companion:

(1) must ~~be employed by or~~have an approved home profile per OAC 317:40-5-3 and contract with a provider contract with a provider agency approved by ~~the Oklahoma Department of Human Services Developmental Disabilities Services Division (DDSD)~~DDS;

(2) may provide companion services for one member. Exceptions to serve as companion for two members may be approved by the ~~DDSD~~DDS director or designee. Exceptions may be approved when members have an existing relationship and to separate them would be detrimental to their well being and the companion demonstrates the skill and ability required to serve as companion for two members;

(3) household is limited to one individual companion provider. Exceptions for two individual companion providers in a household who each provide companion services to different members may be approved by the ~~DDSD~~DDS director or designee;

(4) may not provide companion services to more than two members at any time;

(5) household may not serve more than three members through any combination of companion or respite services;

(6) may not have employment, volunteer activities, or personal commitments that prevent the companion from fulfilling his or her responsibilities to the member per OAC 317:40-5.

~~(A) Employment as an agency companion is the companion's primary employment.~~

~~(B) The companion may not have other employment when approved to serve two members regardless of the levels of support required by the members.~~

(~~C~~A) The companion may have ~~other~~ employment when the:

(i) ~~the Team~~personal support team (Team) documents and addresses all related concerns in the member's Plan;

(ii) ~~the other~~ employment is approved in advance by the ~~DDSD~~DDS area manager or designee; and

(iii) ~~the~~ companion's employment does not require on-call duties and occurs during time the member is engaged in outside activities such as school, employment or other routine scheduled meaningful activities; and

(iv) ~~the~~ companion provides assurance the employment is such that the member's needs will be met by the companion should the member's outside activities be disrupted.

(~~D~~B) If, after receiving approval for ~~other~~ employment, authorized ~~DDSD~~DDS staff determines the ~~other~~ employment interferes with the care, training, or supervision needed by the member, the companion must terminate, within 30 calendar days:

(i) ~~the other~~his or her employment; or

(ii) his or her ~~employment~~contract as an agency companion.

(~~E~~C) Homemaker, habilitation training specialist, and respite services are not provided for the companion to maintain other employment.

(c) Each member may receive up to 60 days per year of therapeutic leave without reduction in the agency companion's ~~salary~~payment.

(1) Therapeutic leave:

(A) is a SoonerCare payment made to the contract provider to enable the member to retain services; and

(B) is claimed when the:

(i) ~~the~~ member does not receive ACS for 24 consecutive hours due to:

(I) a visit with family or friends without the companion;

(II) vacation without the companion; or

(III) hospitalization, regardless of whether the companion is present; or

(ii) ~~the~~ companion uses authorized respite time;

(C) is limited to no more than 14 consecutive, calendar days per event, not to exceed 60 days per Plan of Care (POC) year; and

(D) cannot be ~~accrued~~carried over from one ~~Plan of Care(POC)~~POC year to the next.

(2) The therapeutic leave daily rate is the same amount as the ACS per diem rate except for the pervasive rate ~~which~~that is paid at the enhanced agency companion per diem rate.

(3) The provider agency pays the agency companion the ~~salary that~~payment he or she would earn if the member were not on therapeutic leave.

(d) The companion may receive a combination of hourly or daily respite per POC year equal to 660 hours ~~for respite for the companion~~.

(e) Habilitation Training Specialist (HTS) services:

(1) may be approved by the ~~DDSD~~DDS director or designee when providing ACS with additional support represents the most cost-effective placement for the member when there is an ongoing pattern of not:

(A) sleeping at night; or

(B) working or attending employment, educational, or day services ~~with documented and continuing efforts by the Team~~;

(2) may be approved when a time-limited situation exists in which the ~~ACS~~companion provider is unable to provide ACS, and the provision of HTS will maintain the placement or provide needed stability for the member, and must be reduced when the situation changes;

(3) must be reviewed annually or more frequently as needed, which includes a change in agencies or individual companion providers~~.~~; and

(4) must be documented by the Team and the Team must continue efforts to resolve the need for HTS.

(f) ~~The agency receives a provider rate based on the agency's service model. The AC rate for the:~~

~~(1) employer model includes funding for the provider agency for the provision of benefits to the companion; or~~

~~(2) contractor model does not include funding for the provider agency for the provision of benefits to the companion.~~ The contractor model does not include funding for the provider agency for the provision of benefits to the companion.

(g) The agency receives a ~~provider~~daily rate based on the member's level of support. Levels of support for the member and corresponding payment are:

(1) determined by authorized ~~DDSD~~DDS staff ~~in accordance with~~per levels described in (A) through(D); and

(2) re-evaluated when the member has a change in agency companion providers ~~which~~that includes a change in agencies or individual companion providers.

(A) **Intermittent level of support.** Intermittent level of support is authorized when the member:

(i) requires minimal physical assistance with basic daily living skills, such as bathing, dressing, and eating;

(ii) may be able to spend short periods of time unsupervised inside and outside the home; and

(iii) requires assistance with medication administration, money management, shopping, housekeeping, meal preparation, scheduling appointments, arranging transportation or other activities.

(B) **Close level of support.** Close level of support is authorized when the member requires:

(i) ~~requires~~ regular, frequent and sometimes constant physical assistance and support to complete daily living skills, such as bathing, dressing, eating, and toileting;

(ii) ~~requires~~ extensive assistance with medication administration, money management, shopping, housekeeping, meal preparation, scheduling appointments, arranging transportation or other activities; and

(iii) ~~requires~~ assistance with health, medication, or behavior interventions that may include the need for specialized training, equipment, and diet.

(C) **Enhanced level of support.** Enhanced level of support is authorized when the member:

(i) is totally dependent on others for:

(I) completion of daily living skills, such as bathing, dressing, eating, and toileting; and

(II) medication administration, money management, shopping, housekeeping, meal preparation, scheduling appointments, and arranging transportation or other activities;

(ii) demonstrates ongoing complex medical issues requiring specialized training courses per OAC 340:100-5-26; or

(iii) has behavioral issues that requires a protective intervention plan (PIP) with a restrictive or intrusive procedure ~~as defined in~~per OAC 340:100-1-2. The PIP must:

(I) be approved by the Statewide Behavior Review Committee (SBRC), per OAC 340:100-3-14;

(II) be reviewed by the Human Rights Committee (HRC), per OAC 340:100-3-6, or

(III) have received expedited approval per OAC 340:100-5-57.

(D) **Pervasive level of support.** Pervasive level of support is authorized when the member:

(i) requires additional professional level support to remain in an agency companion setting due to pervasive behavioral or emotional challenges. The support must be provided:

(I) by a licensed professional counselor (LPC) or professional with a minimum of Masters of Social Work (MSW) degree; and

(II) as ongoing support and training to the companion, offering best practice approaches in dealing with specific members; and

(ii) does not have an available personal support system. The need for this service level:

(I) must be identified by the grand staffing committee, per OAC 340:75-8-40; and

(II) requires the provider to market, recruit, screen, and train potential companions for the member identified.

(h) Authorization for payment of Agency Companion Service is contingent upon receipt of:

(1) the applicant's approval letter authorizing ACS for the identified member;

(2) an approved relief and emergency back-up plan addressing a back-up location and provider;

(3) the Plan;

(4) the POC; and

(5) the date the member moved to the companion home.

(~~h~~i) The Plan reflects the amount of room and board the member pays to the companion. The provider must use the room and board reimbursement payment to meet the member's needs. Items purchased with the room and board reimbursement payment include housing and food.~~If the amount exceeds $450, the additional amount must be:~~

~~(1) agreed upon by the member and, if when applicable, legal guardian;~~

~~(2) recommended by the Team; and~~

~~(3) approved by the DDSD area manager or designee.~~

(~~i~~j) If the amount exceeds $500, the additional amount must be:

(1) agreed upon by the member and, when applicable, legal guardian;

(2) recommended by the Team; and

(3) approved by the DDS area manager or designee.

317:40-5-4. Selection of Agency Companion Services provider [REVOKED]

~~(a) The matching of the lifestyles and personalities of a companion and a service recipient and the overall compatibility of the companion with the service recipient are the most critical elements of the Agency Companion Services (ACS) program. The past and present relationship the service recipient has with the potential companion is the most important consideration in the companion selection process.~~

~~(b) In addition to considering the relationship between the service recipient and the companion, the case manager, the service recipient or legal guardian, and the service recipient's provider agency must reach consensus regarding the criteria listed in this Section before the approval process described in OAC 317:40-5-40 begins.~~

~~(1) The companion must have a relationship with the service recipient. Exceptions may be made by the service recipient's personal support team (Team) upon the recommendation of the Developmental Disabilities Services Division (DDSD) case manager, Division of Children and Family Services (DCFS) worker, or the Adult Protective Services (APS) worker, when appropriate.~~

~~(2) The companion must have the commitment and skills to meet the individual needs of the service recipient.~~

~~(3) The companion must understand the level of commitment required for the ACS program and how the commitment will affect the companion's personal life.~~

~~(4) The companion must understand how the commitment to the ACS program will impact the companion's family.~~

~~(5) The companion must demonstrate the ability to establish and maintain a positive relationship with the service recipient, particularly when stressful situations occur.~~

~~(6) The companion must demonstrate the ability to work collaboratively with others in the service process.~~

~~(7) Neither a service recipient's spouse nor the parent of a minor child may serve as that person's companion. A family member serving as companion must meet all requirements for the ACS program given in this Subchapter.~~

~~(8) The Chief Executive Officer (CEO) of a provider agency may not serve as a companion.~~

317:40-5-5. Agency Companion Services provider responsibilities

(a) ~~Providers of Agency Companion Services (ACS)~~Companions are required to meet all applicable standards outlined in this subchapter and competency-based training ~~described in OAC~~per Oklahoma Administrative Code(OAC) 340:100-3-38. The provider agency ensures ~~that~~ all companions meet the criteria in this Section.

(b) Failure to follow any rules or standards, failure to promote the independence of the member, or failure to follow recommendation(s) of the personal support team (Team) results in problem resolution, per OAC 340:100-3-27, for the companion, and ~~if~~when warranted, revocation of approval of the companion.

(c) ~~In addition to the criteria given in OAC 317:40-5-4, the~~The companion:

(1) ensures no other adult or child is cared for in the home on a regular or part-time basis, including other Oklahoma Department of Human Services ~~(OKDHS)~~(DHS) placements, family members, or friends without prior written authorization from the ~~OKDHS~~ Developmental Disabilities Services ~~Division (DDSD)~~(DDS)area manager or designee;

(2) meets the requirements of OAC 317:40-5-103~~,Transportation~~. Neither the companion nor the provider agency may claim transportation reimbursement for vacation travel;

(3) transports or arranges transportation for the member to and from school, employment programs, recreational activities, medical appointments, and therapy appointments;

(4) delivers services in a manner that contributes to the member's enhanced independence, self-sufficiency, community inclusion, and well-being;

(5) participates as a member of the member's Team and assists in the development of the member's Individual Plan(Plan) for service provision;

(6) ~~with assistance from the DDSD case manager and the provider agency program coordination staff,~~ develops, implements, evaluates, and revises the training strategies corresponding to the relevant outcomes for which the companion is responsible, as identified in the Plan~~;~~.

~~(A)~~ The companion ~~documents and provides monthly data and health care summaries to the provider agency program coordination staff~~may request assistance from the case manager or program coordinator.

~~(B) The agency staff provides monthly reports to the DDSD case manager or nurse.~~The companion documents and provides monthly data and health care summaries to the provider agency program coordination staff.

(7) delivers services at appropriate times as directed in the Plan;

(8) does not deliver services that duplicate the services mandated to be provided by the public school district pursuant to the Individuals with Disabilities Education Act (IDEA);

(9) is sensitive to and assists the member in participating in the member's chosen religious faith. No member is expected to attend any religious service against his or her wishes;

(10) participates in, and supports visitation and contact with the member's natural family, guardian, and friends, ~~provided this~~when visitation is desired by the member;

(11) obtains permission from the member's legal guardian, ~~if~~when a guardian is assigned, and notifies the family, the provider agency program coordination staff, and the case manager prior to:

(A) traveling out of state;

(B) overnight visits; or

(C) involvement of the member in any publicity;

(12) serves as the member's health care coordinator per OAC 340:100-5-26;

(13) ensures the monthly room and board contribution received from the member is used toward the cost of operating the household;

(14) assists the member in accessing entitlement programs for which the member may be eligible and maintains records required for the member's ongoing eligibility;

(15) works closely with the provider agency program coordination staff and the ~~DDSD~~DDS case manager, to ensure all aspects of the member's program are implemented to the satisfaction of the member, the member's family or legal guardian, when appropriate, and the member's Team;

(16) assists the member ~~in achieving~~to achieve the member's maximum level of independence;

(17) submits, in a timely manner, to the provider agency program coordination staff all necessary information regarding the member;

(18) ensures ~~that~~ the member's confidentiality is maintained per OAC 340:100-3-2;

(19) supports the member in forming and maintaining friendships with neighbors, co-workers, and peers, including people who do not have disabilities;

(20) implements training and provides supports that enable the member to actively join in community life;

(21) does not serve as representative payee for the member without a written exception from the ~~DDSD~~DDS area manager or designee~~;~~.

(A) The written exception is retained in the member's home record.

(B) When serving as payee, the companion complies with~~ the requirements of~~ OAC 340:100-3-4 requirements~~.~~;

(22) ensures the member's funds are properly safeguarded~~.~~;

(23) obtains prior approval from the member's representative payee when making a purchase of over $50~~.00~~ with the member's funds;

(24) allows ~~the~~ provider agency and DDS staff ~~and DDSD staff~~ to make announced and unannounced visits to the home;

(25) develops an Evacuation Plan, using ~~OKDHS~~DHS Form 06AC020E, Evacuation/Escape Plan, for the home and conducts training with the member;
(26) conducts fire and weather drills at least quarterly and documents the fire and weather drills using Form 06AC021E, Fire and Weather Drill Record;
(27) develops and maintains a personal possession inventory for personal possessions and adaptive equipment, using Form 06AC022E, Personal Possession Inventory;
(28) supports the member's employment program by:
(A) assisting the member to wear appropriate work attire; and
(B) contacting the member's employer as outlined by the Team and in the Plan; ~~and~~
(29) is responsible for the cost of ~~their~~the member's meals and entertainment during recreational and leisure activities. Activities must be affordable to the member. Concerns about affordability are presented to the Team for resolution;
(30) for adults, reports suspected maltreatment including abuse, verbal abuse, sexual abuse, neglect, financial neglect, and/or exploitation of a vulnerable adult per Section 10-104 of Title 43A of the Oklahoma Statutes to the DHS Office of Client Advocacy (OCA);
(31) for children, reports abuse, neglect, sexual abuse, or sexual exploitation per Section 1-2-101 of Title 10A of the Oklahoma Statutes to the Child Abuse and Neglect Hotline at 1-800-522-3511; ~~and~~
(32) follows all applicable rules promulgated by the Oklahoma Health Care Authority and ~~DDSD~~DDS, including:
(A) OAC 340:100-3-40;
(B) OAC 340:100-5-50 through 100-5-58;
(C) OAC 340:100-5-26;
(D) OAC 340:100-5-34;
(E) OAC 340:100-5-32;
(F) OAC 340:100-5-22.1;
(G) OAC 340:100-3-27;
(H) OAC 340:100-3-38; and
(I) OAC 340:100-3-34;
(33) is neither the member's spouse, nor when the member is a minor child, the member's parent. A family member servicing as companion must meet all requirements listed in this Subchapter; and
(34) is not the Chief Executive Officer of a provider agency.

317:40-5-6. Agency Companion ~~Services provider~~contractor requirements

(a) The service recipient or legal guardian, the provider agency, ~~and~~or the Oklahoma Department of Human ~~Services'~~Services Developmental Disabilities Services ~~Division(DDSD)~~(DDS)case manager may identify an applicant to be screened for approval to serve as ~~the~~ companion.
(b) Approval by ~~DDSD~~DDS for a person to provide contracted Agency Companion Services (ACS) requires ~~that~~ the applicant:
(1) is 21 years of age or older;
(2) has attended the ~~DDSD~~DDS or provider agency ACS orientation;
(3) ~~is employed by, or~~ contracts with~~,~~ a provider agency having a current contract with the Oklahoma Health Care Authority to provide ACS;
(4) submits the completed ~~DDSD~~DDS application packet ~~in accordance with OAC~~per Oklahoma Administrative Code (OAC) 317:40-5-40 within the required time period to designated ~~DDSD~~DDS staff or the provider agency staff;
(5) cooperates with ~~the~~ designated ~~DDSD staff~~DDS or ~~the~~ provider agency staff in the development and completion of the home profile approval process ~~described in~~per OAC 317:40-5-40; and
(6) has completed all training required by OAC 340:100-3-38, including medication administration training, and all provider agency pre-employment training ~~as described in~~per OAC 317:40-5-40.

317:40-5-9. Payment authorization for Agency Companion Services [REVOKED]

~~Authorization for payment of Agency Companion Services (ACS) is contingent upon receipt of:~~
~~(1) the applicant's approval letter authorizing ACS for the identified member;~~
~~(2) approved relief and emergency back-up plan;~~
~~(3) revised Individual Plan;~~
~~(4) revised Plan of Care; and~~
~~(5) placement of the member in the ACS home.~~

317:40-5-10. Agency companion services (ACS) annual review [REVOKED]

~~(a) In addition to the requirements of OAC 317:40-5-40, Oklahoma Department of Human Services Developmental Disabilities Services Division (DSSD) ACS staff annually review services provided by the companion to determine:~~
~~(1) continued compliance of the companion and home environment with DDSD and Oklahoma Health Care Authority rules;~~
~~(2) the satisfaction of the service recipient with the living arrangement; and~~
~~(3) continued use of the home.~~
~~(b) The annual review contains:~~
~~(1) written comments of the ACS staff from interviews with the service recipient that highlight the service recipient's thoughts and feelings about his or her companion and the ACS placement;~~
~~(2) written comments from the companion regarding program changes and issues of concern;~~
~~(3) summaries of the information obtained from the companion, the service recipient, the provider agency program coordination staff, and the DDSD case manager;~~
~~(4) recommendations for continued service;~~
~~(5) information received from Child Welfare or Adult Protective Services, if available; and~~
~~(6) identified areas of service that need improvement as well as areas of service that have been beneficial.~~

~~(c) A copy of the annual review is maintained in the DDSD area office with copies to the DDSD state office and the provider agency.~~

317:40-5-11. Termination of Agency Companion placement

(a) ~~Designated~~Oklahoma Department of Human Services Developmental Disabilities Services ~~Division (DDSD)~~(DDS) staff may terminate an individual agency companion (AC) placement for reasons including, but not limited to the:

(1) ~~the~~ member's decision to move to a different residence;

(2) ~~the~~ request of the companion;and

(3) ~~the Team~~personal support team determines the AC placement is no longer the most appropriate placement for the member;

~~(4) failure of the companion to complete tasks related to problem resolution, per OAC 340:100-3-27, as agreed;~~

~~(5) confirmed abuse, neglect, or exploitation of any person;~~

~~(6) breach of confidentiality;~~

~~(7) involvement of the companion in criminal activity, or criminal activity in the home;~~

~~(8) failure to provide for the care and well-being of the member;~~

~~(9) continued failure to implement the Individual Plan, per OAC 340:100-5-50 through 100-5-58;~~

~~(10) failure to complete and maintain training per OAC 340:10-3-38;~~

~~(11) failure to report changes in the household;~~

~~(12) failure or inability of the home to meet standards per OAC 317:40-5-40;~~

~~(13) continued failure to follow applicable Oklahoma Department of Human Services or Oklahoma Health Care Authority rules;~~

~~(14) decline of the companion's health to the point that he or she can no longer meet the needs of the member;~~

~~(15) employment by the companion without prior approval by the DDSD area programs manager for residential services; or~~

~~(16) domestic disputes which may result in emotional instability of the member.~~

(b) Upon termination of the placement~~:~~

~~(1) the property of the member or the state is removed immediately by the member or his or her designee; and~~

~~(2)~~ the Team meets to develop an orderly transition plan and arranges for the member's property to be moved as necessitated by the transition plan.

(c) ~~If an individual placement is terminated for reasons identified in (4)-(16) in this Section, DDSD staff will disapprove continued use of the companion.~~Termination of an individual companion placement may also occur in conjunction with denial of a home profile per OAC 317:40-5-40.

317:40-5-13. Agency Companion Services provider agency responsibilities

(a) The agency providing Agency Companion Services (ACS) complies with Oklahoma Health Care Authority and Oklahoma Department of Human Services (DHS) policies and procedures governing all aspects of service provision.

(b) The provider agency is responsible for all ~~employee or~~ contract provider related activities detailed in this Subchapter.

(c) In the event the provider agency wishes to discontinue services immediately due to an emergency, the provider agency cooperates with the DHS Developmental Disabilities Services ~~Division (DDSD)~~ (DDS) to secure alternative services in the least restrictive environment.

(d) The provider agency ensures that services provided meet requirements of ~~OAC~~Oklahoma Administrative Code (OAC) 340:100-5-22.1, unless ~~different~~other requirements are stated in this Section.

(e) ~~If~~When the provider agency serves as the member's representative payee, the provider agency must adhere to ~~the requirements of~~ OAC 340:100-3-4.1 requirements.

(f) The provider agency acts immediately to remedy any situation posing a risk to the health, well-being, or provision of specified services to the member.

~~(1) In the event of such a risk, the provider agency immediately notifies DDSD of the nature of the situation and notifies DDSD upon the resolution of the threatening situation.~~

(~~2~~1) The provider agency's program coordination staff ~~contacts and informs the DDSD case manager within 24 hours of an incident or injury. The provider agency~~ completes and submits incident and injury reports to ~~DDSD in accordance with~~DDS per OAC 340:100-3-34.

(~~3~~2) A ~~companion~~companion's contract is immediately terminated when a provider agency becomes aware ~~that~~ a companion's name appears on the Community Services Worker Registry per OAC 340:100-3-39.

(g) The provider agency ensures only one member is served in a provider home. Exceptions may be approved by the ~~DDSD~~DDS area manager or designee.

(h) ~~When the provider agency has knowledge of problems occurring in the placement, the provider agency's program coordination staff immediately schedules a meeting with the companion, the member, the member's legal guardian or advocate, the DDSD case manager and other appropriate DDSD staff to resolve the issues involved. If resolution of the issues does not occur at the meeting, any participant is to contact the DDSD area manager or designee and the provider agency for resolution.~~Team members, including the provider agency program coordinator, companion, member, legal guardian, advocate, and DDS case manager work together to resolve issues to ensure the member's needs are met and the shared living arrangement is successful.

~~(i) When a change in the provider agency is requested by the member or the companion, all participants attempt to resolve the issues. No change in the provider agency occurs unless the DDSD area manager or designee agrees that all issues have been or discussed.~~

(~~j~~i) The ~~decision to remain or terminate services with the provider agency is the~~ choice of provider agency is made by the member or his or her legal guardian.

(~~k~~j) When a member transfers from a provider agency, the outgoing provider agency ensures ~~that~~ the member has a 30 calendar-day supply of medication and a seven-day supply of food, household ~~supplies~~, and personal supplies.

(~~l~~k) ~~The responsibilities of the provider~~Provider agency's program coordination staff responsibilities are to:

(1) ~~to~~ visit the provider home daily during the first week of placement;

(2) ~~to visit the home~~make a minimum of three ~~times~~face to face visits per month per OAC 340:100-5-22.1;

(3) ~~to~~ allow the ~~needs of the member~~member's needs to determine the frequency of all other visits;

(4) ~~to~~ coordinate and submit quarterly reports to the provider agency for submission to the ~~DDSD~~DDS area office; and

(5) ~~to~~ communicate regularly with the ~~DDSD~~DDS case manager regarding any changes in the household or any other program issues or concerns.

(~~m~~l) The provider agency~~,works with the~~ companion, member, and guardian ~~to~~ develop a back-up plan identifying respite staff~~.~~and an alternate location in the event the home becomes uninhabitable. The back-up plan:

(1) is submitted to the ~~DDSD~~DDS case manager for approval;

(2) describes expected and emergency back-up support and program monitoring for the home; and

(3) is incorporated into the member's Individual Plan (Plan).

(~~n~~m) The respite provider is:

(1) knowledgeable about the member;

(2) trained to implement the member's Plan;

(3) trained per OAC 340:100-3-38;

(4) responsible for the cost of ~~their~~the member's meals and entertainment during recreation and leisure activities. Activities selected must be affordable to the member and respite staff. Concerns about affordability are presented to the Team for resolution.

(~~o~~n) The spouse or other adult residing in the home is considered a natural support and may provide ACS in the absence of the companion, when trained per OAC 340:100-3-38.12.

(~~p~~o) The spouse or other adult residing in the home cannot serve as paid respite staff.

PART 3. GUIDELINES TO STAFF

317:40-5-40. Home profile process

(a) **Applicability.** This Section establishes procedures for the Developmental Disabilities Services (DDS) home profile process. A home profile is required for:

(1) agency companion services (ACS);

(2) specialized foster care (SFC) services;

(3) respite services delivered in the provider's home;

(4) approving services in a home shared by a non-relative provider and a member; and

(5) any other situation that requires a home profile.

(b) **Pre-screening.** Designated ~~Developmental Disabilities Services Division (DDSD)~~(DDS) staff provides the applicant with program orientation and pre-screening information that includes, but is not limited to:

(1) facts, description, and guiding principles of the Home and Community-Based Services (HCBS) program;

(2) an explanation of:

(A) the home profile process;

(B) basic provider qualifications ~~of the provider~~;

(C) health, safety, and environmental issues; and

(D) training required per ~~OAC~~Oklahoma Administrative Code(OAC) 340:100-3-38;

(3) the Oklahoma Department of Human Services ~~(OKDHS)~~(DHS) Form 06AC012E, Specialized Foster Care/Agency Companion Services Information Sheet;

(4) explanation of a background investigation conducted on the applicant and any adult or child living in the applicant's home.

(A) Background investigations are conducted at the time of application and include, but are not limited to:

(i) an Oklahoma State Bureau of Investigation (OSBI) name and criminal records history search, including the Oklahoma Department of Public Safety (DPS), Sex Offender Registry and Mary Rippy Violent Offender Registries;

(ii) Federal Bureau of Investigation (FBI) national criminal history search, based on the fingerprints of the applicant and any adult members of the household;

(iii) search of any involvement as a party in a court action;

(iv) search of all ~~OKDHS~~DHS records, including Child Welfare Services records and the Community Services Worker Registry;

(v) a search of all applicable out-of-state child abuse and neglect registries for any applicant or adult household member who has not lived ~~continuously~~ in Oklahoma continuously for the past five years. ~~The~~A home is not approved without the results of the out-of-state maintained child abuse and neglect registry checks, ~~if~~when a registry is maintained in the applicable state, for all adult household members living in the home. ~~If no~~When a child abuse and neglect registry is not maintained in the applicable state, a request for information is made to the applicable state; and

(vi) search of Juvenile Justice Information System (JOLTS) records for any child older than 13 years of age in the applicant's household.

(B) An application is denied ~~if~~when the applicant or any person residing in the applicant's home:

(i) ~~or any person residing in the applicant's home~~ has a criminal conviction of or pled guilty or no contest to:

(I) physical assault, battery, or a drug-related offense ~~with~~in the five-year period preceding the application date;

(II) child abuse or neglect;

(III) domestic abuse;

(IV) a crime against a child, including, but not limited to, child pornography;

(V) a crime involving violence, including, but not limited to, rape, sexual assault, or homicide, including manslaughter,~~but~~ excluding physical assault and battery~~.Homicide including manslaughter~~; or

(ii) does not meet ~~the requirements of~~ OAC 340:100-3-39 requirements;

(5) ~~OKDHS~~DHS Form 06AC015E, Agency Companion/Specialized Foster Care Employment Record;

(6) ~~OKDHS~~DHS Form 06AC016E, ~~DDSD~~DDS Reference Information Waiver;

(7) ~~OKDHS~~DHS Form 06AC029E, Employer Reference Letter; and

(8) ~~OKDHS~~DHS Form 06AC013E, Pre-Screening for Specialized Foster Care/Agency Companion Services.

(c) **Home profile process.** ~~If~~When the applicant meets the requirements of the prescreening, the initial home profile process described in (1) through (8) of this subsection is initiated.

(1) The applicant completes the required forms and returns the forms to the ~~DDSD~~DDS address provided. Required forms include ~~OKDHS~~DHS Forms:

(A) 06AC008E, Specialized Foster Care/Agency Companion Services Application;

(B) 06AC009E, Financial Assessment;

(C) 06AC011E, Family Health History;

(D) 06AC018E, Self Study Questionnaire;

(E) 06AC019E, Child's Questionnaire;

(F) 06AC010E, Medical Examination Report, ~~if~~when Form 06AC011E indicates conditions that may interfere with the provision of services;

(G) 06AC017E, Insurance Information; and

(H) 06AC020E, Evacuation/Escape Plan.

(2) ~~If~~When an incomplete form or other information is returned to ~~DDSD~~DDS, designated ~~DDSD~~DDS staff sends a letter to the provider or provider agency identifying information needed to complete the required forms. The home profile is not completed until all required information is provided to ~~DDSD~~DDS.

(3) Designated ~~DDSD~~DDS staff completes the home profile when all required forms are completed and provided to ~~DDSD~~DDS.

(4) For each reference provided by the applicant, designated ~~DDSD~~DDS staff completes ~~OKDHS~~DHS Form 06AC058E, Reference Letter;

(5) Designated ~~DDSD~~DDS staff, through interviews, visits, and phone calls, gathers information required to complete ~~OKDHS~~DHS Form 06AC047E, Home Profile Notes.

(6) ~~OKDHS~~DHS Form 06AC069E, Review of Policies and Areas of Responsibilities, is dated and signed by the applicant and designated ~~DDSD~~DDS staff.

(7) The ~~DDSD~~DDS area residential services programs manager sends to the applicant:

(A) a provider approval letter confirming the applicant is approved to serve as a provider; or

(B) a denial letter stating the application ~~is~~and home profile are denied.

(8) ~~DDSD~~DDS staff records the dates of completion of each part of the home profile process.

(d) **Home standards.** In order to qualify and remain in compliance, the applicant's or provider's home must meet the provisions in (1) through (11) of this subsection.

(1) **General conditions.**

(A) The home, buildings, and furnishings must be comfortable, clean, and in good repair and the grounds must be maintained. There must be no accumulation of garbage, debris, or rubbish or offensive odors.

(B) The home must:

(i) be accessible to school, employment, church, day programming, recreational activities, health facilities, and other community resources as needed;

(ii) have adequate heating, cooling and plumbing; and

(iii) provide space for the member's personal possessions and privacy;~~and allow adequate space for the recreational and socialization needs of the occupants.~~

(iv) allow adequate space for the recreational and social needs of the occupants.

(C) Provisions for the member's safety must be present, as needed, including:

(i) guards and rails on stairways;

(ii) wheelchair ramps;

(iii) widened doorways;

(iv) grab bars;

(v) adequate lighting;

(vi) anti-scald devices; and

(vii) heat and air conditioning equipment guarded and installed in accordance with manufacturer requirements. Home modifications and equipment may be provided through HCBS Waivers operated by ~~DDSD~~DDS.

(D) Providers must not permit members to access or use swimming or other pools, hot tubs, saunas, ponds, or spas on the premises without supervision. Swimming pools, hot tubs, saunas, ponds, or spas must be equipped with sufficient safety barriers or devices designed to prevent accidental injury or unsupervised access.

(E) The household must be covered by homeowner's or renter's insurance including personal liability insurance.

(2) **Sanitation.**

(A) Sanitary facilities must be adequate and safe, including toilet and bathing facilities, water supply, and garbage and sewer disposal.

(B) ~~If~~When a septic tank or other non-municipal sewage disposal system is used, it must be in good working order.

(C) Garbage and refuse must be stored in readily cleanable containers, pending weekly removal.

(D) Sanitation for household pets and other domestic animals must be adequate to prevent health hazards.

(i) Proof of rabies or other vaccinations as required by a licensed veterinarian for household pets must be maintained on the premises ~~for household pets~~.

(ii) Pets not confined in enclosures must be under control and not present a danger to members or guests.

(E) There must be adequate control of insects and rodents, including screens used for ventilation in good repair on doors and windows ~~used for ventilation~~.

(F) Universal precautions for infection control must be followed in care to the member. Hands and other skin surfaces must be washed immediately and thoroughly ~~if~~when contaminated with blood or other body fluids.

(G) Laundry equipment, if in the home, must be located in a safe, well-ventilated, and clean area, with the dryer vented to the outside.

(3) **Bathrooms.** A bathroom must:

(A) provide for individual privacy and have a finished interior;

(B) be clean and free of objectionable odors; and

(C) have a bathtub or shower, flush toilet, and sink in good repair, and hot and cold water in sufficient supply to meet the member's hygiene needs.

(i) A sink must be located near each toilet.

(ii) A toilet and sink must be provided on each floor where rooms of members who are non-ambulatory or with limited mobility are located.

(iii) There must be at least one toilet, one sink, and one bathtub or shower for every six household occupants, including the provider and family.

(4) **Bedrooms.** A bedroom must:

(A) have been constructed as such when the home was built or remodeled under permit;

(B) be provided for each member.

~~(i) Minor members must not share bedrooms with adults in the household.~~

~~(ii) No more than two members may share a bedroom.~~

(i) Exception to allow members to share a bedroom may be made by DDS area residential program manager, when DDS determines sharing a bedroom is in the best interest of the member. Minor members must not share bedrooms with adults.

~~(iii) Exceptions to allow members to share a bedroom may be made by the DDSD area residential programs manager, when DDSD determines sharing a bedroom is in the best interest of the members;~~

(ii) A member must not share a bedroom with more than one other person;

(C) have a minimum of 80 square feet of usable floor space for each member or 120 square feet for two members and two means of ~~exit~~egress. The provider, family members, or other occupants of the home must not sleep in areas designated as common use living areas, nor share bedrooms with members;

(D) be finished with walls or partitions of standard construction that go from floor to ceiling;

(E) be adequately ventilated, heated, cooled, and lighted;

(F) include an individual bed for each member consisting of a frame, box spring, and mattress at least 36 inches wide, unless a specialized bed is required to meet identified needs. Cots, rollaways, couches, futons, and folding beds must not be used for members.

(i) Each bed must have clean bedding in good condition consisting of a mattress pad, bedspread, two sheets, pillow, pillowcase, and blankets adequate for the weather.

(ii) Sheets and pillowcases must be laundered at least weekly or more often if necessary.

(iii) Waterproof mattress covers must be used for members who are incontinent;

(G) have sufficient space for each member's clothing and personal effects, including hygiene and grooming supplies.

(i) Members must be allowed to keep and use reasonable amounts of personal belongings and have private, secure storage space.

(ii) The provider assists the member in furnishing and decorating the member's bedroom.

(iii) Window coverings must be in good condition and allow privacy for members;

(H) be on ground level for members with impaired mobility or who are non-ambulatory; and

(I) be in close enough proximity to the provider to alert the provider to nighttime needs or emergencies, or be equipped with a call bell or intercom.

(5) **Food.**

(A) Adequate storage must be available to maintain food at the proper temperature, including a properly working refrigerator. Food storage must be such that food is protected from dirt and contamination and maintained at proper temperatures to prevent spoilage.

(B) Utensils, dishes, glassware, and food supplies must not be stored in bedrooms, bathrooms, or living areas.

(C) Utensils, dishes, and glassware must be washed and stored to prevent contamination.

(D) Food storage and preparation areas and equipment must be clean, free of offensive odors, and in good repair.

(6) **Phone.**

(A) A working phone must be provided in the home that is available and accessible for the member's use for incoming and outgoing calls.

(B) Phone numbers to the home and providers must be kept current and provided to ~~DDSD~~DDS and, ~~if~~when applicable, the provider agency.

(7) **Safety.**

(A) Buildings must meet all applicable state building, mechanical, and housing codes.

(B) Heating, in accordance with manufacturer's specifications, and electrical equipment, including wood stoves, must be installed in accordance with all applicable fire and life safety codes. Such equipment must be used and maintained properly and in good repair.

(i) Protective glass screens or metal mesh curtains attached at top and bottom are required on fireplaces.

(ii) Unvented portable oil, gas, or kerosene heaters are prohibited.

(C) Extension cord wiring must not be used in place of permanent wiring.

(D) Hardware for all exit and interior doors must have an obvious method of operation that cannot be locked against ~~exit~~egress.

(8) **Emergencies.**

(A) Working smoke detectors must be provided in each bedroom, adjacent hallways, and in two story homes at the top of each stairway. Alarms must be equipped with a device that warns of low battery condition, when battery operated.

(B) At least one working fire extinguisher must be in a readily accessible location.

(C) A working flashlight must be available for emergency lighting on each floor of the home.

(D) The provider:

(i) maintains a working carbon monoxide detector in the home;

(ii) maintains a written evacuation plan for the home and conducts training for evacuation with the member;

(iii) conducts fire drills quarterly and severe weather drills twice per year ~~and maintains and makes available fire drill and severe weather drill documentation for review by DDSD~~;

(iv) ~~has a written back-up plan for temporary housing in the event of an emergency; and~~makes fire and severe weather drill documentation available for review by DDS;

(v) ~~is responsible to re-establish a residence, if the home becomes uninhabitable.~~has a written back-up plan for temporary housing in the event of an emergency; and

(vi) is responsible to re-establish a residence, if the home becomes uninhabitable.

(E) A first aid kit must be available in the home.

(F) The address of the home must be clearly visible from the street.

(9) **Special hazards.**

(A) Firearms and other dangerous weapons must be stored in a locked permanent enclosure. Ammunition must be stored in a separate locked location. Providers are prohibited from assisting members to obtain, possess, or use dangerous or deadly weapons per OAC 340:100-5-22.1.

(B) Flammable and combustible liquids and hazardous materials must be safely and properly stored in original, properly labeled containers.

(C) Cleaning supplies, medical sharps containers, poisons, and insecticides must be properly stored in original, properly labeled containers in a safe area away from food, food preparation areas, dining areas, and medications.

(D) Illegal substances are not permitted on the premises.

(10) **Vehicles.**

(A) All vehicles used to transport members must meet local and state requirements for licensing, inspection, insurance, and capacity.

(B) Drivers of vehicles must have valid and appropriate driver licenses.

(11) **Medication.** Medication for the member is stored per OAC 340:100-5-32.

(e) **Evaluating the applicant and home.** The initial home profile evaluation includes, but is not limited to:

(1) evaluating the applicant's:

(A) interest and motivation;

(B) life skills;

(C) children ~~in the home~~;

(D) methods of behavior support and discipline;

(E) marital status,~~and~~ background, and household composition~~, and children~~;

(F) income and money management; and

(G) teamwork and supervision, back-up plan, and use of relief; and

(2) assessment and recommendation. ~~DDSD~~DDS staff:

(A) evaluates the ability of the applicant to provide services ;

(B) ~~approves only applicants who can fulfill the expectations of the role of service provider;~~assesses the overall compatibility of the applicant and the service recipient, ensuring the lifestyles and personalities of each are compatible for the shared living arrangement. The applicant must:

(i) express a long term commitment to the service member unless the applicant will only be providing respite services;

(ii) demonstrate the skills to meet the individual needs of the member;

(iii) express an understanding of the commitment required as a provider of services;

(iv) express an understanding of the impact the arrangement will have on personal and family life;

(v) demonstrate the ability to establish and maintain positive relationships, especially during stressful situations; and

(vi) demonstrates the ability to work collaboratively and cooperatively with others in a team process;

(C) ~~if the applicant does not meet standards per OAC 317:40-5-40, ensures the final recommendation includes:~~

~~(i) basis for the denial decision; and~~

~~(ii) effective date for determining the applicant as not meeting standards. Reasons for denying a profile may include, but are not limited to:~~

~~(I) lack of stable, adequate income to meet the applicant's own or total family needs or poor management of available income;~~

~~(II) a physical facility that is inadequate to accommodate the addition of a member to the home or presents health or safety concerns;~~

~~(III) the age, health, or any other condition of the applicant that impedes the applicant's ability to provide appropriate care for a member;~~

~~(IV) relationships in the applicant's household are unstable and unsatisfactory;~~

~~(V) the mental health of the applicant or other family or household member impedes the applicant's ability to provide appropriate care for a member;~~

~~(VI) references are guarded or have reservations in recommending the applicant;~~

~~(VII) the applicant fails to complete the application, required training, or verifications in a timely manner as requested or provides information that is incomplete, inconsistent, or untruthful; or~~

~~(VIII) the home is determined unsuitable for the member requiring placement;~~approves only applicants who can fulfill the expectations of the role of service provider;

(D) ~~notifies the applicant in writing of the final recommendation; and~~when the applicant does not meet standards per OAC 317:40-5-40, ensures the final recommendation includes:

(i) a basis for the denial decision; and

(ii) an effective date for determining the applicant does not meet standards. Reasons for denying a request to be a provider may include, but are not limited to:

(I) a lack of stable, adequate income to meet the applicant's own or total family needs or poor management of the available income;

(II) a physical facility that is inadequate to accommodate the addition of a member to the home or presents health or safety concerns;

(III) the age, health, or any other condition of the applicant that impedes the applicant's ability to provide appropriate care for a member;

(IV) relationships in the applicant's household that are unstable and unsatisfactory;

(V) the mental health of the applicant or other family or household member that impedes the applicant's ability to provide appropriate care for a member;

(VI) references who are guarded or have reservations in recommending the applicant;

(VII) the applicant failed to complete the application, required training, or verifications in a timely manner as requested or provided incomplete, inconsistent, or untruthful information;

(VIII) the home is determined unsuitable for the member requiring placement;

(IX) confirmed abuse, neglect, or exploitation of any person;

(X) breach of confidentiality;

(XI) involvement of the applicant or provider involvement in criminal activity or criminal activity in the home;

(XII) failure to complete training per OAC 340:100-3-38;

(XIII) failure of the home to meet standards per subsection (d) of this Section;

(XIV) failure to follow applicable DHS or Oklahoma Health Care Authority (OHCA) rules;

(E) ~~if an application is canceled or withdrawn prior to completion of the profile, completes a final written assessment that includes:~~

~~(i) reason the application was canceled or withdrawn;~~

~~(ii) DDSD staff's impression of the applicant based on information obtained; and~~

~~(iii) effective date of cancellation or withdrawal. Written notice is sent to the applicant to confirm cancellation or withdrawal of the application, a copy is included in local and State Office records.~~notifies the applicant in writing of the final approval or denial of the home profile;

(F) when an application is canceled or withdrawn prior to completion of the home profile, completes a final written assessment that includes the:

(i) reason the application was canceled or withdrawn; and

(ii) DDS staff's impression of the applicant based on information obtained; and

(iii) effective date of cancellation or withdrawal. Written notice is sent to the applicant to

confirm cancellation or withdrawal of the application, and a copy is included in local and State Office records.

(f) **Frequency of evaluation.** ~~Homes are assessed for~~Home profile evaluations are completed for initial approval or denial of an applicant. After an initial approval, a home profile review is conducted annually and as needed for compliance and continued approval.~~Agency Companion Services providers are assessed annually and as needed for compliance and continued approval. Specialized foster care and respite homes are assessed bi-annually and as needed for compliance and continued approval. Any other situations requiring a home profile are assessed annually and as needed for compliance and continued approval.~~DDS area residential services staff conduct at least biannual home visits to specialized foster care providers. The annual ~~evaluation~~home profile review is a comprehensive review of the living arrangement, the provider's continued ability to meet standards~~.~~, the needs of the member and the home to ensure ongoing compliance with home standards. A home profile review is conducted when a provider notifies DDS of his or her intent to move to a new residence. DDS staff asses the home to ensure the new home meets home standards and is suitable to meet the member's needs. The annual home profile review;

(1) ~~The annual evaluation consists of~~includes information specifically related to the provider's home and is documented on ~~OKDHS~~DHS Form 06AC024E, Annual Review~~.~~;

(2) ~~OKDHS~~includes~~FORM~~form 06AC010E,Medical Examination Report,~~mustbe~~ completed a minimum of every three years following the initial approval, unless medical circumstances warrant more frequent completion~~.~~;

(3) ~~Input~~includes information from the ~~DDSD~~DDS case manager, the provider of agency companion or SFC services, the Child Welfare ~~worker~~specialist, Adult Protective Services ~~staff~~, and Office of Client Advocacy staff, and the provider agency program coordinator ~~is included in the evaluation, if~~when applicable.

(4) ~~The background investigation per OAC 317:40-5-40(b) is repeated every year, except the FBI national criminal history search.~~includes information from the service member indicating satisfaction with service and a desire to continue the arrangement;

(5) ~~Providers are notified in writing of the continued recommendation of the use of the home.~~ addresses areas of service where improvement is needed;

(6) ~~Copies of OKDHS Forms 06AC024E and, if applicable, 06AC010E, are included in local and State Office records.~~ includes areas of service where progress was noted or were of significant benefit to the member;

(7) ensures background investigation per OAC 317:40-5-40(b) is repeated every year, except for the OSBI and FBI national criminal history search;

(8) ensures the FBI national criminal history search per OAC 317:40-5-40(b)(4)(A)(ii) is repeated every five years;

(9) includes written notification to providers and agencies, when applicable, of the continued approval of the provider.

(10) includes written notification to providers and agencies, when the provider or agency fails to comply with the home standards per OAC 317:40-5-40 including deadlines for correction of the identified standards; and includes copies of DHS Forms 06AC024E and, when applicable, 06AC010E, in local and State Office records.

(g) Reasons a home profile review may be denied include, but are not limited to:

(1) lack of stable, adequate income to meet the provider's own or total family needs or poor management of available income;

(2) a physical facility that is inadequate to accommodate the addition of a member to the home or presents health or safety concerns;

(3) the age, health, or any other condition of the provider that impedes the provider's ability to provide appropriate care for a member;

(4) relationships in the provider's household that are unstable and unsatisfactory;

(5) the mental health of the provider or other family or household member impedes the provider's ability to provide appropriate care for a member;

(6) the provider fails to complete required training, or verifications in a timely manner as requested or provides incomplete, inconsistent, or untruthful information;

(7) the home is determined unsuitable for the member;

(8) failure of the provider to complete tasks related to problem resolution, as agreed, per OAC 340:100-3-27;

(9) failure of the provider to complete a plan of action, as agreed, per OAC 317:40-5-63;

(10) confirmed abuse, neglect, or exploitation of any person;

(11) breach of confidentiality;

(12) involvement of the applicant or provider involvement in the criminal activity or criminal activity in the home;

(13) failure to provide for the care and well-being of the service member;

(14) failure or continued failure to implement the individual Plan, per OAC 340:100-5-50 through 100-5-58;

(15) failure to complete and maintain training per OAC 340:100-3-38;

(16) failure to report changes in the household;

(17) failure to meet standards of the home per subsection (d) of this Section;

(18) failure or continued failure to follow applicable DHS or OHCA rules;

(19) decline of the provider's health to the point he or she can no longer meet the needs of the service member;

(20) employment by the provider without prior approval of the DDS area programs manager for residential services; or

(21) domestic disputes that cause emotional distress to the member.

(h) **Termination of placement.** When an existing placement is terminated for any reason:

(1) the Team meets to develop an orderly transition plan; and

(2) DDS staff ensures the property of the member and state is removed promptly and appropriately by the member or his or her designee.

[OAR Docket #15-515; filed 6-12-15]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 45. INSURE OKLAHOMA

[OAR Docket #15-530]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
317:45-1-3 [AMENDED]
Subchapter 9. Insure Oklahoma ESI Employee Eligibility
317:45-9-1 [AMENDED]
Subchapter 11. Insure Oklahoma IP
Part 5. Insure Oklahoma IP Member Eligibility
317:45-11-20 [AMENDED]
317:45-11-21 [AMENDED]
(Reference APA WF # 14-49B)
AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 435.603; 1115 Demonstration Project No. 11-W00048/6
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 23, 2014
COMMENT PERIOD:
January 16, 2015 through February 16, 2015
PUBLIC HEARING:
February 18, 2015
ADOPTION:
March 30, 2015
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 31, 2015
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 8, 2015
FINAL ADOPTION:
June 8, 2015
EFFECTIVE:
August 27, 2015
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The methodology for determining Insure Oklahoma (IO) eligibility, for both IP and ESI, is changing to the Modified Adjusted Gross Income (MAGI) methodology. Additionally, the reasonable opportunity for SoonerCare members to obtain citizenship or alienage documentation is amended.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 1. GENERAL PROVISIONS

317:45-1-3. Definitions

The following words or terms, when used in this Chapter, will have the following meanings unless the context clearly indicates otherwise:

"Carrier" means:

(A) an insurance company, insurance service, insurance organization, or group health service, which is licensed to engage in the business of insurance in the State of Oklahoma and is subject to State law which regulates insurance, or Health Maintenance Organization (HMO) which provides or arranges for the delivery of basic health care services to enrollees on a prepaid basis, except for copayments or deductibles for which the enrollee is responsible, or both and is subject to State law which regulates Health Maintenance Organizations (HMOs);

(B) a Multiple Employer Welfare Arrangement (MEWA) licensed by the Oklahoma Insurance Department;

(C) a domestic MEWA exempt from licensing pursuant to Title 36 O.S., Section 634(B) that otherwise meets or exceeds all of the licensing and financial requirements of MEWAs as set out in Article 6A of Title 36; or

(D) any entity organized pursuant to the Interlocal Cooperation Act, Section 1001 et seq. of Title 74 of the Oklahoma Statutes as authorized by Title 36 Section 607.1 of the Oklahoma Statutes and which is eligible to qualify for and hold a certificate of authority to transact insurance in this State and annually submits on or before March 1st a financial statement to the Oklahoma Insurance Department in a form acceptable to the Insurance Commissioner covering the period ending December 31st of the immediately preceding fiscal year.

"Child Care Center" means a facility licensed by OKDHS which provides care and supervision of children and meets all the requirements in OAC 340:110-3-1 through OAC 340:110-3-33.3.

"College Student" means an Oklahoma resident between the age of 19 through 22 that is a full-time student at an Oklahoma accredited University or College.

"Covered Dependent" means the spouse of the approved applicant and/or child under 19 years of age or his or her child 19 years through 22 years of age who is attending an Oklahoma qualified institution of higher education and relying upon the insured employee or member for financial support.

"Eligibility period" means the period of eligibility extending from an approval date to an end date.

"Employee" means a person who works for an employer in exchange for earned income. This includes the owners of a business.

"Employer" means the business entity that pays earned income to employees.

"Employer Sponsored Insurance" means the program that provides premium assistance to qualified businesses for approved applicants.

"EOB" means an Explanation of Benefits.

"Explanation of Benefit" means a statement issued by a carrier that indicates services rendered and financial responsibilities for the carrier and Insure Oklahoma member.

"Full-time Employment" means a normal work week of 24 or more hours.

"Full-time Employer" means the employer who employs an employee for 24 hours or more per week to perform work in exchange for wages or salary.

~~**"Gross Household Income" or "Annual Gross Household Income"** means the countable income (earned or unearned) that is computed pursuant to OHCA's waiver.~~

"Individual Plan" means the safety net program for those qualified individuals who do not have access to Insure Oklahoma ESI.

"In-network" means providers or health care facilities that are part of a health plan's network of providers with which it has negotiated a discount, and services provided by a physician or other health care provider with a contractual agreement with the insurance company paid at the highest benefit level.

"Insure Oklahoma" means a health plan purchasing strategy in which the State uses public funds to pay for a portion of the costs of health plan coverage for eligible populations.

"Insure Oklahoma IP" means the Individual Plan program.

"Insure Oklahoma ESI" means the Employer Sponsored Insurance program.

"Member" means an individual enrolled in the Insure Oklahoma ESI or IP program.

"Modified Adjusted Gross Income (MAGI)" means the financial eligibility determination methodology established by the Patient Protection and Affordable Care Act (PPACA) in 2009.

"OESC" means the Oklahoma Employment Security Commission.

"OHCA" means the Oklahoma Health Care Authority.

"OKDHS" means the Oklahoma Department of Human Services.

"PCP" means Primary Care Provider.

"PEO" or "Professional Employer Organization" means any person engaged in the business of providing professional employer services. A person engaged in the business of providing professional employer services shall be subject to registration under the Oklahoma Professional Employer Organization Recognition and Registration Act as provided in Title 40, Chapter 16 of Oklahoma Statutes, Section 600.1 et.seq.

"Primary Care Provider" means a provider under contract with the Oklahoma Health Care Authority to provide primary care services, including all medically necessary referrals.

"Premium" means a monthly payment to a carrier for health plan coverage.

~~**"Qualified Health Plan(QHP)**~~**Qualified Benefit Plan (QHP)"** means a health plan that has been approved by the OHCA for participation in the Insure Oklahoma program.

"Qualifying Event" means the occurrence of an event that permits individuals to join a group health plan outside of the "open enrollment period" and/or that allows individuals to modify the coverage they have had in effect. Qualifying events are defined by the employer's health plan and meet federal requirements under Public Law 104-191 (HIPAA), and 42 U.S.C. 300bb-3.

"State" means the State of Oklahoma, acting by and through the Oklahoma Health Care Authority.

SUBCHAPTER 9. INSURE OKLAHOMA ESI EMPLOYEE ELIGIBILITY

317:45-9-1. Employee eligibility requirements

(a) Employees must complete and submit the OHCA required forms and application to be considered for participation in the program.

(b) The eligibility determination will be processed within 30 days from the date the application is received. The employee will be notified ~~in writing~~ of the eligibility decision.

(c) All eligible employees described in this section must be enrolled in their employer's qualified health plan. Eligible employees must:

(1) ~~have an annual gross household income at or below 250 percent of the Federal Poverty Level (FPL). The increase from 200 to 250 percent of the FPL will be phased in over a period of time as determined by the Oklahoma Health Care Authority. The standard deduction for work related expenses such as income tax payments, Social Security taxes, and transportation to and from work, is $240 per each full-time or part-time employed member;~~have countable income at or below the appropriate standard according to the family size on the Insure Oklahoma ESI Income Guidelines form;

(A) Effective January 1, 2016, financial eligibility for Insure Oklahoma ESI health benefits is determined using the MAGI methodology. Unless questionable, the income of applicants does not require verification. See OAC 317:35-6-39 through OAC 317:35-6-54 for the applicable MAGI rules for determining household composition and countable income.

(B) Income is evaluated on a monthly basis for all individuals included in the case for Insure Oklahoma ESI Health Benefits.

(2) be a US citizen or alien as described in 317:35-5-25;

(3) be Oklahoma residents;

(4) ~~provide social security number for all household members~~furnish, or show documentation of an application for, a Social Security number at the time of application for Insure Oklahoma ESI health benefits;

(5) not be receiving benefits from SoonerCare or Medicare;

(6) be employed with a qualified employer at a business location in Oklahoma;

(7) be age 19 through age 64~~ or an emancipated minor~~;

(8) be eligible for enrollment in the employer's qualified health plan;

(9) not have full-time employment with any employer who does not meet the eligible employer guidelines listed in 317:45-7-1(a)(1)-(2);

(10) select one of the qualified health plans the employer is offering; and

(11) provide in a timely manner any and all documentation that is requested by the Insure Oklahoma program by the specified due date.

(d) An employee's covered dependents are eligible when:

(1) the employer's health plan includes coverage for dependents;

(2) the employee is eligible;

(3) if employed, the spouse may not have full-time employment with any employer who does not meet the eligible employer guidelines listed in 317:45-7-1(a)(1)-(2); and

(4) the covered dependents are enrolled in the same health plan as the employee.

(e) If an employee or their covered dependents are eligible for multiple qualified health plans, each may receive a subsidy under only one health plan.

(f) ~~Dependent college students must enroll under their parents and all annual gross household income (including parent income) must be included in determining eligibility. Independent college students may apply on their own without parent income included in the household. College student status as dependent or independent is determined by the student's current Free Application for Federal Student Aid (FAFSA). College students must also provide a copy of their current student schedule to prove full-time student status.~~College students may enroll in the Insure Oklahoma ESI program as covered dependents. Effective January 1, 2016, financial eligibility for Insure Oklahoma ESI health benefits for college students is determined using the MAGI methodology. See OAC 317:35-6-39 through OAC 317:35-6-54 for the applicable MAGI rules for determining household composition and countable income.

(g) ~~Dependent children in families whose annual gross household income is from 185 up to and including 300 percent of the Federal Poverty Level may be eligible. The inclusion of children into the Insure Oklahoma program will be phased in over a period of time as determined by the OHCA. No other deductions or disregards apply.~~Covered dependent children must have countable income at the appropriate standard according to the family size on the Insure Oklahoma ESI Income Limits Guidelines form. Effective January 1, 2016, financial eligibility for Insure Oklahoma ESI health benefits is determined using the MAGI methodology. See OAC 317:35-6-39 through OAC 317:35-6-54 for the applicable MAGI rules for determining household composition and countable income.

(1) Children found to be eligible for SoonerCare may not receive coverage through Insure Oklahoma.

(2) Children are not eligible for Insure Oklahoma if they are a member of a family eligible for employer-sponsored dependent health insurance coverage under any Oklahoma State Employee Health Insurance Plan.

~~(3) Children who already have coverage through another source must undergo, or be excepted from, a six month uninsured waiting period prior to becoming eligible for Insure Oklahoma. Exceptions to the waiting period may include:~~

~~(A) the cost of covering the family under the ESI plan meets or exceeds ten percent of the annual gross household income. The cost of coverage includes premiums, deductibles, co-insurance, and co-payments;~~

~~(B) loss of employment by a parent which made coverage available;~~

~~(C) affordable ESI is not available; "affordable" coverage is defined by the OHCA annually using actuarially sound rates established by the Oklahoma State and Education Employee Group Insurance Board (OSEEGIB); or~~

~~(D) loss of medical benefits under SoonerCare.~~

(h) ESI approved individuals must notify the OHCA of any changes, including household status and income, that might impact individual and/or dependent eligibility in the program within ~~30 calendar~~10 days of the change.

(i) When the agency responsible for determining eligibility for the member becomes aware of a change in the member's circumstances, the agency will promptly redetermine eligibility for all household members whose eligibility is affected by the change.

SUBCHAPTER 11. INSURE OKLAHOMA IP

PART 5. INSURE OKLAHOMA IP MEMBER ELIGIBILITY

317:45-11-20. Insure Oklahoma IP eligibility requirements

(a) Oklahoma employed working adults not eligible to participate in an employer's qualified health plan, employees of non-participating employers, self-employed, unemployed seeking work, workers with a disability, and qualified college students may apply for the Individual Plan. Applicants cannot obtain IP coverage if they are eligible for ESI. Applicants, unless a qualified college student, must be engaged in employment as defined under state law, must be considered self-employed as defined under federal and/or state law, or must be considered unemployed as defined under state law.

(b) The eligibility determination will be processed within 30 days from the date the complete application is received. The applicant will be notified ~~in writing~~ of the eligibility decision.

(c) In order to be eligible for the IP, the applicant must:

(1) choose a valid PCP according to the guidelines listed in 317:45-11-22~~, at the time they make application~~;

(2) be a US citizen or alien as described in 317:35-5-25;

(3) be an Oklahoma resident;

(4) ~~provide social security numbers for all household members~~furnish, or show documentation of an application for, a Social Security number at the time of application for Insure Oklahoma IP health benefits;

(5) be not currently enrolled in~~, or have an open application for~~ SoonerCare or Medicare;

(6) be age 19 through 64~~ or an emancipated minor~~;

(7) make premium payments by the due date on the invoice;

(8) not have full-time employment with any employer who does not meet the eligible employer guidelines listed in 317:45-7-1(a)(1)-(2);

(9) be not currently covered by a private health insurance policy or plan; and

(10) provide in a timely manner any and all documentation that is requested by the Insure Oklahoma program by the specified due date.

(d) If employed and working for an approved Insure Oklahoma employer who offers a qualified health plan, the applicant must meet the requirements in subsection (c) of this Section and:

(1) ~~have annual gross household income at or below 100 percent of the Federal Poverty Level.~~have countable income at or below the appropriate standard according to the family size on the Insure Oklahoma IP Income Guidelines form.

(A) Effective January 1, 2016, financial eligibility for Insure Oklahoma IP health benefits is determined using the MAGI methodology. Unless questionable, the income of applicants do not require verification. See OAC 317:35-6-39 through OAC 317:35-6-54 for the applicable MAGI rules for determining household composition and countable income.

(B) Income is evaluated on a monthly basis for all individuals included in the case for Insure Oklahoma IP Health Benefits;

(2) be ineligible for participation in their employer's qualified health plan due to number of hours worked.

~~(3) have received notification from Insure Oklahoma indicating their employer has applied for Insure Oklahoma and has been approved.~~

(e) If employed and working for an employer who does not offer a qualified health plan, the applicant must meet the requirements in subsection (c) of this Section and ~~have an annual gross household income at or below 100 percent of the Federal Poverty Level. The standard deduction for work related expenses such as income tax payments, Social Security taxes, and transportation to and from work, is $240 per each full-time or part-time employed member.~~have countable income at or below the appropriate standard according to the family size on the Insure Oklahoma IP Income Guidelines form.

(1) Effective January 1, 2016, financial eligibility for Insure Oklahoma IP health benefits is determined using the MAGI methodology. Unless questionable, the income of applicants does not require verification. See OAC 317:35-6-39 through OAC 317:35-6-54 for the applicable MAGI rules for determining household composition and countable income.

(2) Income is evaluated on a monthly basis for all individuals included in the case for Insure Oklahoma IP Health Benefits.

(f) If self-employed, the applicant must meet the requirements in subsection (c) of this Section and:

(1) ~~must have an annual gross household income at or below 100 percent of the Federal Poverty Level. No standard deduction for work related expenses such as income tax payments, Social Security taxes, and transportation to and from work may be made for self-employed individuals. Allowable Deductions for work related expenses for self-employed individuals, with the exception of the standard deduction, are found at 317:35-10-26(b)(1)~~have countable income at or below the appropriate standard according to the family size on the Insure Oklahoma IP Income Guidelines form.

(A) Effective January 1, 2016, financial eligibility for Insure Oklahoma IP health benefits is determined using the MAGI methodology. Unless questionable, the income of applicants does not require verification. See OAC 317:35-6-39 through OAC 317:35-6-54 for the applicable MAGI rules for determining household composition and countable income.

(B) Income is evaluated on a monthly basis for all individuals included in the case for Insure Oklahoma IP Health Benefits.

~~(2) verify self-employment and income by providing the most recent federal tax return with all supporting schedules and copies of all 1099 forms; and~~

(~~3~~2) must not have full-time employment with any employer who does not meet the eligible employer guidelines listed in 317:45-7-1(a)(1)-(2).

(g) If unemployed seeking work, the applicant must meet the requirements in ~~subsection(c)~~subsection (c) of this Section and the following:

(1) ~~Applicant must have an annual gross household income at or below 100 percent of the Federal Poverty Level. In determining income, payments of regular unemployment compensation in the amount of $25 per week ending June 30, 2010 and any amount of emergency unemployment compensation paid through May 31, 2010, will not be counted, as authorized under the American Recovery and Reinvestment Tax Act of 2009.~~Applicants must have countable income at or below the appropriate standard according to the family size on the Insure Oklahoma IP Income Guidelines form.

~~(2) Applicant must verify eligibility by providing a most recent copy of their monetary OESC determination letter and a most recent copy of at least one of the following:~~

~~(A) OESC eligibility letter,~~

~~(B) OESC weekly unemployment payment statement, or~~

~~(C) bank statement showing state treasurer deposit.~~

(2) Effective January 1, 2016, financial eligibility for Insure Oklahoma IP health benefits is determined using the MAGI methodology. Unless questionable, the income of applicants does not require verification. See OAC

317:35-6-39 through OAC 317:35-6-54 for the applicable MAGI rules for determining household composition and countable income.

(3) Income is evaluated on a monthly basis for all individuals included in the case for Insure Oklahoma IP Health Benefits.

(h) If working with a disability, the applicant must meet the requirements in subsection (c) of this Section and the following:

(1) ~~Applicant must have an annual gross household income at or below 100 percent of the Federal Poverty Level based on a family size of one~~Applicants must have countable income at or below the appropriate standard according to the family size on the Insure Oklahoma IP Income Guidelines form.

~~(2) Applicant must verify eligibility by providing a copy of their:~~

~~(A) ticket to work, or~~

~~(B) ticket to work offer letter.~~

(2) Applicants may need to verify eligibility of their enrollment in the Ticket to Work program.

(3) Effective January 1, 2016, financial eligibility for Insure Oklahoma IP health benefits is determined using the MAGI methodology. Unless questionable, the income of applicants does not require verification. See OAC 317:35-6-39 through OAC 317:35-6-54 for the applicable MAGI rules for determining household composition and countable income.

(4) Income is evaluated on a monthly basis for all individuals included in the case for Insure Oklahoma IP Health Benefits.

(i) IP approved individuals must notify the OHCA of any changes, including household status and income, that might impact individual and/or dependent eligibility in the program within ~~30 calendar~~10 days of the change.

(j) When the agency responsible for determining eligibility for the member becomes aware of a change in the member's circumstances, the agency will promptly redetermine eligibility for all household members whose eligibility is affected by the change.

317:45-11-21. Dependent eligibility

(a) If the spouse of an Insure Oklahoma IP approved individual is eligible for Insure Oklahoma ESI, they must apply for Insure Oklahoma ESI. Spouses cannot obtain Insure Oklahoma IP coverage if they are eligible for Insure Oklahoma ESI.

(b) The employed or self-employed spouse of an approved applicant must meet the guidelines listed in 317:45-11-20(a) through (g) to be eligible for Insure Oklahoma IP.

(c) The covered dependent of an applicant approved according to the guidelines listed in 317:45-11-20(h) does not become automatically eligible for Insure Oklahoma IP.

(d) The applicant and the dependents' eligibility are tied together. If the applicant no longer meets the requirements for Insure Oklahoma IP, then the associated covered dependent enrolled under that applicant is also ineligible.

(e) ~~Dependent college students must enroll under their parents and all annual gross household income (including parent income) must be included in determining eligibility. Independent college students may apply on their own without parent income included in the household. College student status as dependent or independent is determined by the student's current Free Application for Federal Student Aid (FAFSA). College students must also provide a copy of their current student schedule to prove full-time student status.~~ College students may enroll in the Insure Oklahoma IP program. Effective January 1, 2016, financial eligibility for Insure Oklahoma IP health benefits for college students is determined using the MAGI methodology. See OAC 317:35-6-39 through OAC 317:35-6-54 for the applicable MAGI rules for determining household composition and countable income.

(f) IP approved individuals must notify the OHCA of any changes, including household status and income, that might impact individual and/or dependent eligibility in the program within ~~30 calendar~~10 days of the change.

(g) When the agency responsible for determining eligibility for the member becomes aware of a change in the covered dependents circumstances, the agency will promptly redetermine eligibility for all household members whose eligibility is affected by the change.

[OAR Docket #15-530; filed 6-12-15]

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

[OAR Docket #15-505]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Medically Fragile Waiver Services
317:50-1-14 [AMENDED]
(Reference APA WF # 14-14A)
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The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, 42 CFR 441.301
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317:50-1-14 [AMENDED]
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November 3, 2014

Register Publication:
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Docket number:
14-957
(Reference APA WF # 14-14)
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Rules are amended to include all 1915(c) waiver programs to comply with 42 CFR 441.301 regarding conflict of interest provisions for case management services. These changes are necessary as the regulation states providers of HCBS for the individual, or those who have an interest in or are employed by a provider of HCBS for the individual, must not provide case management services or develop the person centered service plan. Without the recommended changes, the State is out of compliance with CMS and may be in risk of losing federal funding. Additionally, rules are modified to provide clarification within the institutional transition case management service definition. Without the recommended changes, the policy will remain inconsistent with references to institutional transition as transitional case management services.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 1. MEDICALLY FRAGILE WAIVER SERVICES

317:50-1-14. Description of services

Services included in the Medically Fragile Waiver Program are as follows:

(1) **Case Management.**

(A) Case Management services are services that assist a member in gaining access to medical, social, educational or other services, regardless of payment source of services, that may benefit the member in maintaining health and safety. Case managers initiate and oversee necessary assessments and reassessments to establish or reestablish Waiver program eligibility. Case managers develop the member's comprehensive plan of care, listing only services which are necessary to prevent institutionalization of the member, as determined through assessments. Case managers initiate the addition of necessary services or deletion of unnecessary services, as dictated by the member's condition and available support. Case managers monitor the member's condition to ensure delivery and appropriateness of services and initiate plan of care reviews. If a member requires hospital or skilled nursing facility services, the case manager assists the member in accessing institutional care and, as appropriate, periodically monitors the member's progress during the institutional stay and helps the member transition from institution to home by updating the service plan and preparing services to start on the date the member is discharged from the institution. Case Managers must meet Medically Fragile Waiver Program minimum requirements for qualification and training prior to providing services to members. Prior to providing services to members choosing to Self-Direct their services, Case Managers are required to receive training and demonstrate knowledge regarding the Self-Directed Service delivery model.

(B) Providers may only claim time for billable Case Management activities described as follows:

(i) A billable case management activity is any task or function defined under OAC 317:50-1-15(1)(A)that only a Medically Fragile case manager because of skill, training or authority, can perform on behalf of a member;

(ii) Ancillary activities such as clerical tasks like mailing, copying, filing, faxing, drive time or supervisory/administrative activities are not billable case management activities, although the administrative cost of these activities and other normal and customary business overhead costs have been included in the reimbursement rate for billable activities.

(C) Case Management services are prior authorized and billed per 15-minute unit of service using the rate associated with the location of residence of the member served.

(i) Standard Rate: Case Management services are billed using a Standard rate for reimbursement for billable service activities provided to a member who resides in a county with population density greater than 25 persons per square mile.

(ii) Very Rural/Difficult Service Area Rate: Case Management services are billed using a Very Rural/Difficult Service Area rate for billable service activities provided to a member who resides in a county with population density equal to or less than 25 persons per square mile. An exception would be services to members that reside in OHCA identified zip codes in Osage County adjacent to metropolitan areas of Tulsa and Washington Counties. Services to these members are prior authorized and billed using the Standard rate.

(iii) The latest United States Census, Oklahoma Counties population data is the source for determination of whether a member resides in a county with a population density equal to or less than 25 persons per square mile, or resides in a county with a population density greater than 25 persons per square mile.

(D) Providers of Home and Community Based Services (HCBS) for the member, or those who have an interest in or are employed by a provider of HCBS for the member, must not provide case management or develop the person-centered service plan, except when the State demonstrates that the only willing and qualified entity to provide case management and/or develop person-centered service plans in a geographic area also provides HCBS.

(2) **Institutional Transition Services.**

(A) Institutional Transition Case Management Services are Services required by the member's plan of care, which are necessary to ensure the health, welfare and safety of the member, or to enable the member to function with greater independence in the home, and without which, the member would continue to require institutionalization.

(B) ~~Waiver~~Institutional Transition Case Management services assist institutionalized members that are eligible to receive waiver services in gaining access to needed waiver and other State plan services, as well as needed medical, social, educational and other services to assist the transition, regardless of the funding source for the services which access is gained.

(C) Institutional Transition Case Management services may be authorized for periodic monitoring of a waiver member's progress during an institutional stay, and for assisting the member transition from institution to home by updating the services plan, including preparing for necessary services and supports to be in place or to start on the date the member is discharged from the institution.

(3) **Respite.**

(A) Respite services are provided to members who are unable to care for themselves. They are provided on a short-term basis because of the absence or need for relief of the primary caregiver. Payment for respite care does not include room and board costs unless more than seven hours are provided in a nursing facility. Respite care will only be utilized when other sources of care and support have been exhausted. Respite care will only be listed on the plan of care when it is necessary to prevent institutionalization of the member. Units of services are limited to the number of units approved on the plan of care.

(B) In-Home Respite services are billed per 15-minute unit service. Within any one-day period, a minimum of eight units must be provided with a maximum of 28 units provided. The service is provided in the member's home.

(C) Facility-Based Extended Respite is filed for a per diem rate, if provided in Nursing Facility. Extended Respite must be at least eight hours in duration.

(D) In-Home Extended Respite is filed for a per diem rate. A minimum of eight hours must be provided in the member's home.

(4) **Environmental Modifications.**

(A) Environmental Modifications are physical adaptations to the home, required by the member's plan of care, which are necessary to ensure the health, welfare and safety of the individual, or which enable the individual to function with greater independence in the home and without which, the member would require institutionalization. Adaptations or improvements to the home which are not of direct medical or remedial benefit to the Waiver member are excluded.

(B) All services require prior authorization.

(5) **Specialized Medical Equipment and Supplies.**

(A) Specialized Medical Equipment and Supplies are devices, controls, or appliances specified in the plan of care, which enable members to increase their abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which they live. Also included are items necessary for life support, ancillary supplies and equipment necessary to the proper functioning of such items, and durable and non-durable medical equipment not available under the Medicaid state plan. This service excludes any equipment and/or supply items which are not of direct medical or remedial benefit to the Waiver member. This service is necessary to prevent institutionalization.

(B) Specialized Medical Equipment and Supplies are billed using the appropriate HCPC procedure code. Reoccurring supplies which are shipped to the member are compensable only when the member remains eligible for Waiver services, continues to reside in the home and is not institutionalized in a hospital, skilled nursing facility or nursing home. It is the provider's responsibility to verify the member's status prior to shipping these items. Payment for medical supplies is limited to the Medicare rate, or the SoonerCare rate, or ~~actual acquisition cost plus 30 percent~~is determined through manual pricing. If manual pricing is used, the provider is reimbursed at the provider's documented Manufacturer's Suggested Retail Price (MSRP) minus 30% or invoice cost plus 30%, whichever is the lesser of the two. OHCA may establish a fair market price through claims review and analysis.

(6) **Advanced Supportive/Restorative Assistance.**

(A) Advanced Supportive/Restorative Assistance services are maintenance services to assist a member who has a chronic, yet stable, condition. These services assist with activities of daily living which require devices and procedures related to altered body functions. This service is for maintenance only and is not utilized as a treatment service.

(B) Advanced Supportive/Restorative Assistance service is billed per 15-minute unit of service. The number of units of this service a member may receive is limited to the number of units approved on the plan of care.

(7) **Nursing.**

(A) Nursing services are services listed in the plan of care which are within the scope of the Oklahoma Nursing Practice Act and are provided by a registered professional nurse, or licensed practical or vocational nurse under the supervision of a registered nurse, licensed to practice in the State. Nursing services includes skilled nursing and/or private duty nursing. Skilled nursing is provided on an intermittent or part-time basis. Private duty nursing is individual and continuous care provided to a participant at home by licensed nurses. The provision of the nursing service

will work to prevent or postpone the institutionalization of the member.

(B) Nursing services are services of a maintenance or preventive nature provided to members with stable, chronic conditions. These services are not intended to treat an acute health condition and may not include services which would be reimbursable under either Medicaid or Medicare's Home Health Program. This service primarily provides nurse supervision to the Personal Care Assistant or to the Advanced Supportive/Restorative Assistance Aide and assesses the member's health and prescribed medical services to ensure that they meet the member's needs as specified in the plan of care. A skilled nursing assessment/evaluation on-site visit is made to each member for whom Advanced Supportive/Restorative Assistance services are authorized to evaluate the condition of the member and medical appropriateness of services. An assessment/evaluation visit report will be made to the Medically Fragile Waiver case manager in accordance with review schedule determined in consultation between the Case Manager and the Skilled Nurse, to report the member's condition or other significant information concerning each advanced supportive/restorative care member.

(i) The case manager may recommend authorization of Skilled Nursing services as part of the interdisciplinary team planning for the member's service plan and/or assessment/evaluation of:

(I) the member's general health, functional ability and needs and/or

(II) the adequacy of personal care and/or advanced supportive/restorative assistance services to meet the member's needs including providing on-the-job training and competency testing for personal care or advanced supportive/restorative care aides in accordance with rules and regulations for delegation of nursing tasks as established by the Oklahoma Board of Nursing.

(ii) In addition to assessment/evaluation, the case manager may recommend authorization of Skilled Nursing services for the following:

(I) preparing a one-week supply of insulin syringes for a blind diabetic, who can safely self-inject the medication but cannot fill his/her own syringe. This service would include monitoring the member's continued ability to self-administer the insulin;

(II) preparing oral medications in divided daily compartments for a member who self-administers prescribed medications but needs assistance and monitoring due to a minimal level of disorientation or confusion;

(III) monitoring a member's skin condition when a member is at risk for skin breakdown due to immobility or incontinence, or the member has a chronic stage II decubitus ulcer requiring maintenance care and monitoring;

(IV) providing nail care for the diabetic member or member with circulatory or neurological compromise;

(V) providing consultation and education to the member, member's family and/or other informal caregivers identified in the service plan, regarding the nature of the member's chronic condition. Provide skills training (including return skills demonstration to establish competency) to the member, family and/or other informal caregivers as specified in the service plan for preventive and rehabilitative care procedures.

(C) Nursing service can be billed for service plan development and/or assessment/evaluation services or, for other services within the scope of the Oklahoma Nursing Practice Act including private duty nursing. Nursing services are billed per 15-minute unit of service. A specific procedure code is used to bill for assessment/evaluation/service plan development skilled nursing services and other procedure codes are used to bill for all other authorized nursing services. A maximum of eight units per day of skilled nursing for assessment/evaluation and/or service plan development are allowed. An agreement by a provider to perform a nurse evaluation is also an agreement, to provide the nurse assessment identified in the Medicaid in-home care services for which the provider is certified and contracted. Reimbursement for a nurse evaluation is denied if the provider that produced the nurse evaluation fails to provide the nurse assessment identified in the Medicaid in-home care services for which the provider is certified and contracted.

(8) **Home Delivered Meals.**

(A) Home Delivered Meals provide one meal per day. A home delivered meal is a meal prepared in advance and brought to the member's home. Each meal must have a nutritional content equal to at least one third of the Recommended Daily Allowance as established by the Food and Nutrition Board of the National Academy of Sciences. Meals are only provided to members who are unable to prepare meals and lack an informal provider to do meal preparation.

(B) Home Delivered Meals are billed per meal, with one meal equaling one unit of service. The limit of the number of units a member is allowed to receive is limited on the member's plan of care. The provider must obtain a signature from the member or the member's representative at the time the meals are delivered. In the event that the member is temporarily unavailable (i.e., doctor's appointment, etc.) and the meal is left, the provider must document the reason a signature is not obtained. The signature logs must be available for review.

(9) **Occupational Therapy services.**

(A) Occupational Therapy services are those services that increase functional independence by enhancing the development of adaptive skills and performance capacities of members with physical disabilities and related psychological and cognitive impairments. Services are provided in the member's home and are intended to help the member achieve greater independence to reside and participate in the community. Treatment involves the therapeutic use of self-care, work and play activities and may include modification of the tasks or environment to enable the member to achieve maximum independence, prevent further disability, and maintain health. Under a physician's order, a licensed occupational therapist evaluates the member's rehabilitation potential and develops an appropriate written therapeutic regimen. The regimen utilizes paraprofessional occupational therapy assistant services, within the limits of their practice, working under the supervision of the licensed occupational therapist. The regimen includes education and training for informal caregivers to assist with and/or maintain services, where appropriate. The therapist will ensure monitoring and documentation of the member's rehabilitative progress and will report to the member's case manager and physician to coordinate necessary addition and/or deletion of services, based on the member's condition and ongoing rehabilitation potential.

(B) Occupational Therapy services are billed per 15-minute unit of service. Payment is not allowed solely for written reports or record documentation.

(10) **Physical Therapy services.**

(A) Physical Therapy services are those services that prevent physical disability through the evaluation and rehabilitation of members disabled by pain, disease or injury. Services are provided in the member's home and are intended to help the member achieve greater independence to reside and participate in the community. Treatment involves use of physical therapeutic means such as massage, manipulation, therapeutic exercise, cold or heat therapy, hydrotherapy, electrical stimulation and light therapy. Under a physician's order, a licensed physical therapist evaluates the member's rehabilitation potential and develops an appropriate, written therapeutic regimen. The regimen utilizes paraprofessional physical therapy assistant services, within the limits of their practice, working under the supervision of the licensed physical therapist. The regimen includes education and training for informal caregivers to assist with and/or maintain services, where appropriate. The therapist will ensure monitoring and documentation of the member's rehabilitative progress and will report to the member's case manager and physician to coordinate necessary addition and/or deletion of services, based on the member's condition and ongoing rehabilitation potential.

(B) Physical Therapy services are billed per 15-minute units of service. Payment is not allowed solely for written reports or record documentation.

(11) **Speech and Language Therapy services.**

(A) Speech/Language Therapy services are those that prevent speech and language communication disability through the evaluation and rehabilitation of members disabled by pain, disease or injury. Services are provided in the member's home and are intended to help the member achieve greater independence to reside and participate in the community. Services involve use of therapeutic means such as evaluation, specialized treatment, and/or development and oversight of a therapeutic maintenance program. Under a physician's order, a licensed Speech/Language Pathologist evaluates the member's rehabilitation potential and develops an appropriate, written therapeutic regimen. The regimen utilizes paraprofessional therapy assistant services within the limits of their practice, working under the supervision of the licensed Speech/Language Pathologist. The regimen includes education and training for informal caregivers to assist with and/or maintain services, where appropriate. The Pathologist will ensure monitoring and documentation of the member's rehabilitative progress and will report to the member's case manager and physician to coordinate necessary addition and/or deletion of services, based on the member's condition and ongoing rehabilitation potential.

(B) Speech/Language Therapy services are billed per 15-minute unit of service. Payment is not allowed solely for written reports or record documentation.

(12) **Respiratory Therapy Services.**

(A) Respiratory therapy services are provided for a member who, but for the availability of in-home respiratory services, would require respiratory care as an inpatient in a hospital or nursing facility. Services are provided in the member's home under the care of a physician who is familiar with the technical and medical components of home ventilator support and the physician must determine medically that in-home respiratory care is safe and feasible for the member. Treatment involves use of therapeutic means such as: evaluation, respiratory treatments, chest physiotherapy, and/or development and oversight of a therapeutic maintenance program. Under a physician's order, a registered respiratory therapist evaluates the member and develops an appropriate, written therapeutic regimen. The regimen includes education and training for informal caregivers to assist with and/or maintain services, where appropriate. The therapist will ensure monitoring and documentation of the member's progress and will report to the member's case manager and physician to coordinate necessary addition and/or deletion of services, based on the member's condition and ongoing rehabilitation potential.

(B) Respiratory Therapy services are billed per 15-minute unit of service. Payment is not allowed solely for written reports or record documentation.

(13) **Hospice Services.**

(A) Hospice is palliative and/or comfort care provided to the member and his/her family when a physician certifies that the member has a terminal illness and has six months or less to live and orders hospice Care. Medically Fragile Waiver Hospice Care is authorized for a six month period and requires a physician certification of a terminal illness and orders of hospice care. If the member requires more than six months of hospice care, a physician or nurse practitioner must have a face-to-face visit with the member thirty days prior to the initial hospice authorization end date and re-certify that the member has a terminal illness and has six months or less to live and orders additional hospice care. After the initial authorization period, additional periods of hospice may be authorized for a maximum of 60 day increments with physician certification that the member has a terminal illness and has six months or less to live. A member's service plan that includes hospice care must comply with waiver requirements to be within total service plan cost limits.

(B) A hospice program offers palliative and supportive care to meet the special needs arising out of the physical, emotional and spiritual stresses which are experienced during the final stages of illness and during dying and bereavement. The member signs a statement choosing hospice care instead of routine medical care that has the objective to treat and cure the member's illness. Once the member has elected hospice care, the hospice medical team assumes responsibility for the member's medical care for the terminal illness in the home environment. Hospice care services include nursing care, physician services, medical equipment and supplies, drugs for symptom control and pain relief, home health aide and personal care services, physical, occupational and/or speech therapy, medical social services, dietary counseling and grief and bereavement counseling to the member and/or family. A Hospice plan of care must be developed by the hospice team in conjunction with the member's case manager before hospice services are provided. The hospice services must be related to the palliation or management of the member's terminal illness, symptom control, or to enable the individual to maintain activities of daily living and basic functional skills. Hospice may be provided to the member in a Nursing Facility (NF) only when the member is placed in the NF for Medically Fragile Facility Based Extended Respite. Hospice provided as part of Facility Based Extended Respite may not be reimbursed for more than five days during any 30 day period. A member that is eligible for Medicare Hospice provided as a Medicare Part A benefit, is not eligible to receive Medically Fragile Hospice services.

(C) Hospice services are billed per diem of service for days covered by a Hospice plan of care and during which the hospice provider is responsible for providing hospice services as needed by the member or member's family.

(14) **Medically Fragile Waiver Personal Care.**

(A) Medically Fragile Personal Care is assistance to a member in carrying out activities of daily living such as bathing, grooming and toileting, or in carrying out instrumental activities of daily living, such as preparing meals and doing laundry, to assure personal health and safety of the individual or to prevent or minimize physical health regression or deterioration. Personal Care services do not include service provision of a technical nature, i.e. tracheal suctioning, bladder catheterization, colostomy irrigation, and operation/maintenance of equipment of a technical nature.

(B) Medically Fragile Home Care Agency Skilled Nursing staff working in coordination with a Case Manager are responsible for development and monitoring of the member's Personal Care plan.

(C) Medically Fragile Personal Care services are prior authorized and billed per 15-minute unit of service with units of service limited to the number of units on the approved plan of care.

(15) **Personal Emergency Response System.**

(A) Personal Emergency Response System (PERS) is an electronic device which enables certain individuals at high risk of institutionalization to secure help in an emergency. The individual may also wear a portable "help" button to allow for mobility. The system is connected to the person's phone and programmed to signal, in accordance with member preference, a friend, a relative or a response center once a "help" button is activated. The response center is staffed by trained professionals. For an Medically Fragile Program member to be eligible to receive PERS service, the member must meet all of the following service criteria:

(i) a recent history of falls as a result of an existing medical condition that prevents the individual from getting up from a fall unassisted;

(ii) lives alone and has no regular caregiver, paid or unpaid, and therefore is left alone for long periods of time;

(iii) demonstrates capability to comprehend the purpose of and activate the PERS;

(iv) has a health and safety plan detailing the interventions beyond the PERS to assure the member's health and safety in his/her home;

(v) has a disease management plan to implement medical and health interventions that reduce the possibility of falls by managing the member's underlying medical condition causing the falls; and,

(vi) the service avoids premature or unnecessary institutionalization of the member.

(B) PERS services are billed using the appropriate HCPC procedure code for installation, monthly service or purchase of PERS. All services are prior authorized in accordance with the Medically Fragile approved plan of care.

(16) **Prescription drugs.** Members are eligible for a maximum of six prescriptions per month with a limit of three brand name prescriptions. Seven additional generic prescriptions per month are allowed if medically necessary. Medically necessary prescriptions beyond the three brand name or thirteen total prescriptions will be covered with prior authorization. More information on prescription drugs is provided at 317:30-5-72.

(17) **Self-Direction.**

(A) Self-Direction is a method of service delivery that allows waiver members to determine supports and services they need to live successfully in a home or community based setting. A member choosing Self-Direction is the employer of record for his/her Personal Care and Advanced Supportive/Restorative Care service providers and must have an approved plan of care prior to initiation of any Self-Directed activities.

(B) The OHCA uses the following criteria to determine a member's service eligibility to participate in the Self-Directed Services program:

(i) residence in the Self-Directed services approved area;

(ii) member's health and safety with Self-Directed services can reasonably be assured based on a review of service history records and a review of member capacity and readiness to assume employer responsibilities under Self-Direction with any one of the following findings as basis to deny a request for Self-Direction due to inability to assure member health and safety;

(I) the member does not have the ability to make decisions about his/her care or service planning and the member's "authorized representative" is not willing to assume Self-Directed services responsibilities, or

(II) the member is not willing to assume responsibility, or to enlist an "authorized representative" to assume responsibility, in one or more areas of Self-Direction such as in service planning, or in assuming the role of employer of the Personal Services Assistant (PSA) or Advanced Personal Services Assistant (APSA) service provider, or in monitoring and managing health or in preparation for emergency backup, or

(III) the member has a recent history of self-neglect or self-abuse as evidenced by Adult Protective Services intervention within the past 12 months and does not have an "authorized representative" with capacity to assist with Self-Direction responsibilities;

(C) The member voluntarily makes an informed choice to Self-Direct services. As part of the informed choice, decision making process for Self-Direction, the OHCA staff or the Case Manager provides consultation and assistance as the member completes a self-assessment of preparedness to assume the role of employer for their Personal Services Assistant. The orientation and enrollment process will provide the member with a basic understanding of what will be expected of them under Self-Direction, the supports available to assist them to successfully perform employer responsibilities and an overview of the potential risks involved.

(D) The OHCA uses the following criteria to determine that based upon documentation, a person is no longer allowed to participate in the Self-Directed Services option:

(i) the member does not have the ability to make decisions about his/her care or service planning and the member's "authorized representative" is not willing to assume Self-Direction responsibilities; or

(ii) the member is not willing to assume responsibility, or to enlist an "authorized representative" to assume responsibility, in one or more areas of Self-Direction such as in service planning, or in assuming the role of employer of the PSA or APSA service providers, or in monitoring and managing health or in preparation for emergency backup; or

(iii) the member has a recent history of self-neglect or self-abuse as evidenced by Adult Protective Services intervention and does not have an "authorized representative" with capacity to assist with Self-Direction responsibilities; or

(iv) the member abuses or exploits their employee; or

(v) the member falsifies time-sheets or other work records; or

(vi) the member, even with Case Manager and Financial Management Services assistance, is unable to operate successfully within their Individual Budget Allocation; or

(vii) inferior quality of services provided by member/employer's employee, or the inability of the member/employer's employee to provide the number of service units the member requires, jeopardizes the member's health and/or safety.

(E) The member may designate a family member or friend as an "authorized representative" to assist in the service planning process and in executing member employer responsibilities. If the member chooses to designate an "authorized representative", the designation and agreement identifying the "willing adult" to assume this role and responsibility is documented with dated signatures of the member, the designee and the member's Case Manager or the OHCA staff.

(i) A person having guardianship or power of attorney or other court sanctioned authorization to

make decisions on behalf of the member has legal standing to be the member's designated "authorized representative".

(ii) An individual hired to provide Personal Services Assistance to a member may not be designated the "authorized representative" for the member.

(F) Self-Directed Services are delivered as authorized on the service plan and are limited to Personal Care, Respite and Advanced Supportive/Restorative Care. The member employs the Respite or Personal Services Assistant (PSA) and/or the Advanced Personal Services Assistant (APSA) and is responsible, with assistance from the Administrative Financial Management Services (FMS), for ensuring that the employment complies with State and Federal Labor Law requirements. The member:

(i) recruits, hires and, as necessary, discharges the PSA and APSA;

(ii) provides instruction and training to the PSA or APSA on tasks to be done and works with the Case Manager to obtain skilled nursing services assistance with training when necessary. Prior to performing an Advanced Personal Services Assistance task for the first time, the APSA must demonstrate competency in the tasks in an on-the-job training session conducted by the member and the member must document the attendant's competency in performing each task in the APSA's personnel file;

(iii) determines where and how the PSA or APSA works, hours of work, what is to be accomplished and, within Individual Budget Allocation limits, wages to be paid for the work;

(iv) supervises and documents employee work time; and,

(v) provides tools and materials for work to be accomplished.

(G) Financial Management Services are program administrative services provided to participating Self-Directed Service employer/members by agencies contracted with the OHCA. Financial Management Services are employer related assistance that provides Internal Revenue Service (IRS) fiscal reporting agent and other financial management tasks and functions including, but not limited to:

(i) employer payroll, at a minimum of semi monthly, and associated withholding for taxes, or for other payroll withholdings performed on behalf of the member as employer of the PSA or APSA;

(ii) other employer related payment disbursements as agreed to with the member and in accordance with the member's Individual Budget Allocation;

(iii) responsibility for obtaining criminal and abuse registry background checks, on behalf of the member, on prospective hires for PSAs or APSAs;

(iv) providing to the member, as needed, assistance with employer related cognitive tasks, decision-making and specialized skills that may include assistance with Individual Budget Allocation planning and support for making decisions including training and providing reference material and consultation regarding employee management tasks such as recruiting, hiring, training and supervising the member's Respite or Personal Services Assistant or Advanced Personal Services Assistant; and

(H) The service of Respite or Personal Services Assistance is billed per 15-minute unit of service. The number of units of PSA a member may receive is limited to the number of units approved on the Service Plan.

(I) The service of Advanced Personal Services Assistance is billed per 15-minute unit of service. The number of units of APSA a member may receive is limited to the number of units approved on the Service Plan.

(J) Self-Directed Services rates are determined using the Individual Budget Allocation (IBA) Expenditure Accounts Determination process for each member. The IBA Expenditure Accounts Determination process includes consideration and decisions about the following:

(i) The Individual Budget Allocation (IBA) Expenditure Accounts Determination constrains total SoonerCare reimbursement for Self-Directed services to be less than expenditures for equivalent services using agency providers.

(ii) The PSA and APSA service unit rates are calculated by the OHCA during the Self-Directed service eligibility determination process. The OHCA sets the PSA and APSA unit rates at a level that is not less than 80 percent and not more than 95 percent of the comparable Agency Personal Care (for PSA) or Advanced Supportive/Restorative (for APSA) service rate. The allocation of portions of the PSA and/or APSA rate to cover salary, mandatory taxes, and optional benefits (including Worker's Compensation insurance, if available) is determined individually for each member using the Self-Directed Services Individualized Budget Allocation Expenditure Accounts Determination Process.

(iii) The IBA Expenditure Accounts Determination process defines the level of program financial resources required to meet the member's need for Self-Directed services. If the member's need for services changes due to a change in health/disability status and/or a change in the level of support available from other sources, the Case Manager, based upon an updated assessment, amends the service plan to increase Self-Directed service units appropriate to meet additional member need. The OHCA, upon favorable review, authorizes the

amended plan and updates the member's IBA. Service amendments based on changes in member need for services do not change an existing PSA or APSA rate. The member, with assistance from the FMS, reviews and revises the IBA Expenditure Accounts calculation annually or more often to the extent appropriate and necessary.

(18) **Self-Directed Goods and Services (SD-GS).**

(A) Self-Directed Goods and Services (SD-GS) are incidental, non-routine goods and services that promote the member's self-care, daily living, adaptive functioning, general household activity, meal preparation and leisure skills needed to reside successfully in the community and do not duplicate other services authorized in the member's plan of care.

(B) These goods and services are purchased from the self-directed budget.

[OAR Docket #15-505; filed 6-12-15]

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

[OAR Docket #15-512]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. My Life, My Choice [REVOKED]
317:50-3-1 [REVOKED]
317:50-3-2 [REVOKED]
317:50-3-3 [REVOKED]
317:50-3-4 [REVOKED]
317:50-3-5 [REVOKED]
317:50-3-6 [REVOKED]
317:50-3-7 [REVOKED]
317:50-3-8 [REVOKED]
317:50-3-9 [REVOKED]
317:50-3-10 [REVOKED]
317:50-3-11 [REVOKED]
317:50-3-12 [REVOKED]
317:50-3-13 [REVOKED]
317:50-3-14 [REVOKED]
317:50-3-15 [REVOKED]
317:50-3-16 [REVOKED]
Subchapter 5. Sooner Seniors [REVOKED]
317:50-5-1 [REVOKED]
317:50-5-2 [REVOKED]
317:50-5-3 [REVOKED]
317:50-5-4 [REVOKED]
317:50-5-5 [REVOKED]
317:50-5-6 [REVOKED]
317:50-5-7 [REVOKED]
317:50-5-8 [REVOKED]
317:50-5-9 [REVOKED]
317:50-5-10 [REVOKED]
317:50-5-11 [REVOKED]
317:50-5-12 [REVOKED]
317:50-5-13 [REVOKED]
317:50-5-14 [REVOKED]
317:50-5-15 [REVOKED]
317:50-5-16 [REVOKED]
(Reference APA WF # 14-19B)
AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, 42 CFR 441.301
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 23, 2014
COMMENT PERIOD:
January 16, 2015 through February 16, 2015
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SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
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Approved by Governor's declaration on June 8, 2015
FINAL ADOPTION:
June 8, 2015
EFFECTIVE:
August 27, 2015
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 3. My Life, My Choice
317:50-3-14. [AMENDED]
Subchapter 5. Sooner Seniors
317:50-5-14. [AMENDED]
Gubernatorial approval:
November 3, 2014
Register Publication:
32 Ok Reg 240
Docket number:
14-957
(Reference APA WF # 14-14)
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Policy is revised to change the operating agency of the 1915(c), My Life, My Choice and Sooner Seniors waivers. Members will be enrolled in the ADvantage waiver and will receive the same services provided in the current waiver. All operating functions and responsibilities for each waiver will be operated by the Oklahoma Department of Human Services. The state has decided not to pursue the relinquishment of the Medically Fragile waiver.
CONTACT PERSON:
Tywanda Cox at 522-7153

DUE TO EXCESSIVE LENGTH OF THESE RULES (AS DEFINED IN OAC 655:10-7-12), THE FULL TEXT OF THESE RULES WILL NOT BE PUBLISHED. THE RULES ARE AVAILABLE FOR PUBLIC INSPECTION AT THE OKLAHOMA HEALTH CAURE AUTHORITY, 4345 NORTH LINCOLN BOULEVARD, OKLAHOMA CITY, OKLAHOMA, AND AT THE SECRETARY OF STATE'S OFFICE OF ADMINISTRATIVE RULES. THE FOLLOWING SUMMARY HAS BEEN PREPARED PURSUANT TO 75 O.S. § 255(B):

SUMMARY:
Policy is amended to transition the operational functions of two of OHCA's internal 1915c waiver services and responsibilities as the waivers are set to expire. The two (2) internal waivers include: (a) My Life My Choice and (b) Sooner Seniors. Members will be enrolled in the Advantage waiver and will receive the same services provided in the current waiver. All operating functions and responsibilities for each waiver will be operated by the Oklahoma Department of Human Services. The state has decided not to pursue the reqlinquishment of the Medically Fragile waiver.

Interested parties may obtain the full text of the rules from the Oklahoma Health Care Authority.

[OAR Docket #15-512; filed 6-12-15]

TITLE 325. OKLAHOMA HORSE RACING COMMISSION
CHAPTER 1. COMMISSION POWERS AND JURISDICTION

[OAR Docket #15-539]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
325:1-1-7. Jurisdiction of stewards to suspend or fine [AMENDED]
AUTHORITY:
75 Oklahoma Statutes §§ 302, 305, and 307; Title 3A O.S., § 204(A); Oklahoma Horse Racing Commission
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 22, 2015
COMMENT PERIOD:
February 17, 2015 through March 20, 2015
PUBLIC HEARING:
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SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The current regulatory text set $2,500 as the maximum fine permitted by the Board of Stewards. Mr. Constantin Rieger, Commission Executive Director, suggested that the maximum amount be changed to $10,000 in an effort to send a clear message to the industry. It would allow the Stewards the ability to fine up to $10,000 per violation which gives the Stewards the authority to impose more meaningful penalties.
CONTACT PERSON:
Bonnie Morris, Agency Rulemaking Liaison, Oklahoma Horse Racing Commission, Shepherd Mall, 2401 N.W. 23, Suite 78, Oklahoma City, OK 73107, (405) 943-6472

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

325:1-1-7. Jurisdiction of stewards to suspend or fine

(a) The Stewards' jurisdiction in any matter **is continuous.** The Stewards may deny, refuse to issue, or refer to the Commission for revocation, or suspend for not more than one year per violation the occupation license of any person whom they have the authority to supervise; or they may impose a fine not to exceed ~~Two Thousand Five Hundred Dollars ($2,500.00)~~Ten Thousand Dollars ($10,000) per violation; or they may exclude from all enclosures in this state; or they may suspend and fine and/or exclude; or they may order that a person be ineligible for a license. All such suspensions, fines, denials, refusals to issue, referrals or exclusions shall be reported immediately to the Commission.

(b) Upon a first offense for the following rule violations, the Stewards shall assess no less than the Stewards' maximum fine and suspension authorization to any person found to be in violation of Commission rules concerning:

(1) a positive laboratory report involving a Schedule I or II controlled substance or Buprenorphine, or

(2) possession of a Schedule I or II controlled substance or Buprenorphine within the enclosure, or

(3) possession or use within the enclosure of a prohibited electrical or mechanical device. Any person whose racing record(s) reflects such prior rule violation(s) shall, upon a subsequent violation, be referred by the Stewards to the Commission with the Stewards' recommendation for specific fine and suspension above the Stewards' authorized fine and suspension maximums.

(c) The Stewards may suspend a horse from participating in races if the horse has been involved in violation(s) of the Rules promulgated by the Commission or the provisions of the Oklahoma Horse Racing Act under the following circumstances:

(1) A horse is a confirmed Bleeder as determined by the Official Veterinarian, and the Official Veterinarian recommends to the Stewards that the horse be suspended from participation.

(2) A horse is involved with:

(A) Any violation of medication laws and rules;

(B) Any suspension or revocation of an occupation license by the Stewards or the Commission or any racing jurisdiction recognized by the Commission; and/or

(C) any violation of prohibited devices, laws and rules.

[OAR Docket #15-539; filed 6-15-15]

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

[OAR Docket #15-540]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
325:25-1-17. Coupling of entries [AMENDED]
325:25-1-21. Refund of fees [AMENDED]
325:25-1-28. Selection of entered horses [AMENDED]
AUTHORITY:
75 Oklahoma Statutes §§ 302, 305, and 307; Title 3A O.S., § 204(A); Oklahoma Horse Racing Commission
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 22, 2015
COMMENT PERIOD:
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SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Mr. Constantin Rieger, Commission Executive Director, proposed rule amendments to the following three racing rules in Chapter 25:

Regarding Rule 325:1-1-7, Mr. Rieger proposed the rule amendments in an effort to expand the number of betting interests per race. Uncoupling of entries would allow for additional pari-mutuel handle.

For Rule 325:25-1-21, Mr. Rieger proposed a rule amendment to change the word 'shall' to 'may', allowing the Stewards additional discretion in handling an incident when a race is not run, declared off, or cancelled for any reason. The change in wording would allow the dispersal of the purses and funds to proceed accordingly.

Regarding Rule 325:25-1-28, Mr. Rieger proposed a rule amendment to allow racetracks and Stewards the flexibility of using Also-Ran Lists or not as deemed necessary.
CONTACT PERSON:
Bonnie Morris, Agency Rulemaking Liaison, Oklahoma Horse Racing Commission, Shepherd Mall, 2401 N.W. 23, Suite 78, Oklahoma City, OK 73107, (405) 943-6472

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

325:25-1-17. Coupling of Entries

In no case shall more than two (2) horses having common ties through Ownership, training, or lease be entered in a purse race (overnight). When making a double entry, the second same Owner entry drawn shall have no preference over any single entry in purse races, excepting a preference over an "in-today" horse.~~If horses are entered in the same race owned wholly or in part by the same Owner, then that entry shall be coupled for wagering purposes.~~ At the time of entry, a preference must be made to the end that each interest may have an entry in each division should the race be divided. For different Owners, an Organization Licensee, with approval of the Stewards, may allow for each entrant to have an equal shake to draw into a race providing the horse(s) have preference. ~~Horses with identical Ownership interests regarding prepayment, nomination and stakes races must be coupled in races which have an incremental purse payout from first to last.~~ If a race is to be divided, an additional conditional entry may be accepted from any interest. Each such entry may have a joint entry. All divided races will be considered separate races.

325:25-1-21. Refund of Fees

If a horse is declared or scratched from a race, the Owner of such horse shall not be entitled to a refund of any nomination, sustaining and/or penalty payments, entry fees, or organization charges paid or remaining due at the time of the declaration or scratch. In the event any race is not run, declared off, or canceled for any reason, the Owners of such horses that remain eligible at the time the race is declared off or canceled ~~shall~~may be entitled to a distribution of the remaining purse or to a complete refund of all the above payments and fees less monies specified in written race conditions for advertising and promotion as determined by the Stewards.

325:25-1-28. Selection of Entered Horses

The manner of selecting post positions of horses shall be determined by the Stewards. The selection shall be by lot and shall be made by one of the Stewards or their designee and a horseman, in public, at the close of entries. If the number of entries to any race is in excess of the number of horses which may, because of track limitations, be permitted to start in any one (1) race, the race may be split; or four (4) horses not drawing into the field ~~shall~~may be placed on an "also eligible" list to be drawn into the race by preference and lot if any of the first numbers are scratched. Any horse which has drawn a post position in a race and enters again on the next day entries are taken, shall be termed an "in-today" horse; and if the race overfills, the horse shall be given no consideration whatsoever, except in stakes races. A horse on the "also eligible" list shall not be considered as an "in-today" horse until s/he has actually been given a post position.

[OAR Docket #15-540; filed 6-15-15]

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

[OAR Docket #15-541]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
325:45-1-9. Furosemide (Salix) use without detention barn [AMENDED]
325:45-1-22. Phenylbutazone use [AMENDED]
AUTHORITY:
75 Oklahoma Statutes §§ 302, 305, and 307; Title 3A O.S., § 204(A); Oklahoma Horse Racing Commission
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
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August 27, 2015

SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Ms. Mary Ann Roberts, Commission Staff Attorney, recommended amendments to two racing rules to change the term 'plasma' to 'plasma/serum' to be consistent within the rules as well as the Commission's Directive on Commission-Sanctioned Thresholds.
CONTACT PERSON:
Bonnie Morris, Agency Rulemaking Liaison, Oklahoma Horse Racing Commission, Shepherd Mall, 2401 N.W. 23, Suite 78, Oklahoma City, OK 73107, (405) 943-6472

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

325:45-1-9. Furosemide (Salix) use without detention barn

The use of Furosemide (Salix) shall be permitted under the following conditions:

(1) The dose shall be administrated intravenously.

(2) The Commission has established a post race ~~plasma~~plasma/serum concentration level not to exceed 100 ng/ml of Furosemide (Salix).

(3) Any treated horse may be subject to having a blood and/or urine sample taken at the direction of the Official Veterinarian to determine the quantitative Furosemide (Salix) levels and/or the presence of other drugs which may be present in the blood or urine sample. The cost of such testing shall be at the expense of the Owner.

(4) The permitted quantitative Furosemide (Salix) level (tolerance level) shall not exceed the tolerance level established by Commission directive [3A:205.2(H)]. Said directive shall be conspicuously posted within the enclosure by the Official Veterinarian.

(5) The Stewards shall impose a fine of Five Hundred Dollars ($500.00) for any Trainer in violation of this Section for a first time offense. For a second time offense involving the same horse in a one (1) year period for violation of this Section, the Stewards shall impose a fine of Dollars ($1,000.00) unless the Trainer was not notified of the first offense prior to the horse running the second time, in which case the Stewards shall impose a fine of Five Hundred Dollars ($500.00). The Stewards shall impose a fine of Two Thousand Five Hundred Dollars ($2,500.00) and may suspend for up to one year the license of any person for a third time violation within a one (1) year period of this Section involving the same horse. When a Trainer has a third violation within a one (1) year period, the horse shall be disqualified and the Owner or Owners of such horse shall not participate in any portion of the purse or stakes; and any trophy or other award shall be returned unless the Trainer was not notified of the second offense prior to the horse running the third time, in which case the Stewards shall impose a fine of Two Thousand, Five Hundred Dollars ($2,500.00).

325:45-1-22. Phenylbutazone use

The use of Phenylbutazone shall be permitted under the following conditions:

(1) Any horse to which Phenylbutazone has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the Official Veterinarian to determine the quantitative Phenylbutazone level(s) and/or the presence of other drugs which may be present in the blood or urine sample(s). The cost of such testing shall be at the expense of the horse Owner.

(2) The permitted quantitative test level of Phenylbutazone shall not exceed 5 micrograms (ug) per milliliter (ml) of ~~plasma~~plasma/serum.

(3) The Stewards shall impose a fine of Five Hundred Dollars ($500.00) for violation of paragraph (2) of this Section if the result of quantitative testing exceeds 5 micrograms (ug) per milliliter (ml) of ~~plasma~~plasma/serum but not greater than 10 micrograms (ug) per milliliter (ml) of ~~plasma~~plasma/serum. In the event any Trainer violates paragraph (2) of this Section not exceeding 10 micrograms per milliliter of ~~plasma~~plasma/serum five (5) or more times within a one (1) year period, that Trainer shall be subject to a One Thousand Dollar ($1,000.00) fine. If the result of quantitative testing of the sample(s) exceed 10 micrograms (ug) per milliliter (ml) of ~~plasma~~plasma/serum, the Stewards shall impose a fine of One Thousand Dollars ($1,000.00); and the Owner or Owners of such horse shall not participate in any portion of the purse or stakes; and any trophy or other award shall be returned. For a second-time offense for violation of greater than 10 micrograms (ug) per milliliter (ml) of ~~plasma~~plasma/serum, the Stewards shall impose a fine of Two Thousand, Five Hundred Dollars ($2,500.00); and the Owner or Owners of such horse shall not participate in any portion of the purse or stakes; and any trophy or other award shall be returned; and if the second-time offense is on the same horse within a one (1) year period, the Stewards shall impose a fine of Two Thousand, Five Hundred Dollars ($2,500.00) and may suspend the Trainer for up to thirty (30) days; and the Owner or Owners of such horse shall not participate in any portion of the purse or stakes; and any trophy or other award shall be returned. Penalties for third time and subsequent violations on the same horse shall be assessed by the Stewards to include fines not to exceed Two Thousand Five Hundred Dollars ($2,500.00) per person per violation, suspension of a license for up to one year, revocation of a license, ordering that a person be ineligible to hold a license, referral of the matter to the Commission with or without recommendation, or any combination of these assessments.

(4) If within one (1) year, any Licensee violates paragraph 3 of this Section by exceeding 10 ug/ml of ~~plasma~~ plasma/serum five (5) times or more, the Stewards shall refer that Licensee to the Commission for disciplinary

[OAR Docket #15-541; filed 6-15-15]

TITLE 485. OKLAHOMA BOARD OF NURSING
CHAPTER 1. ADMINSTRATION

[OAR Docket #15-435]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
485:1-1-3. [AMENDED]
AUTHORITY:
Oklahoma Board of Nursing; 59 O.S. §§567.2 A, 567.4.F.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 6, 2014
COMMENT PERIOD:
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n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Revisions included: 485:1-1-3. Staff members: Clarified appointment and employment of qualified persons to agency positions. 485:1-1-3. Staff members. 485:1-1-3.(b) was deleted and 485:1-1-3.(c) was amended to support the Board hiring, through the Executive Director of the agency, qualified persons without the differentiation of professional and nonprofessional status related to RN licensure.
CONTACT PERSON:
Jackye Ward, MS, RN, CNE, Oklahoma Board of Nursing, 2915 N. Classen, Suite 524, Oklahoma City, OK 73106 (405) 962-1800.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. § 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

485:1-1-3. Staff members

(a) **Executive Director.** *The Board shall appoint and employ a qualified person, who shall be a registered nurse, to serve as Executive Director . . .and shall define the duties.* [59 O.S. Section 567.4(E)]

(b) ~~**Professional staff.** The Board may appoint and employ other qualified persons, who shall be Registered Nurses, to assist in the regulation of nursing education and nursing practice.~~

~~(c)~~ ~~**Non-professional staff.**~~**Staff.** The Board, through its designee the Executive Director, may appoint and employ other qualified persons~~, who are not required to be Registered Nurses,~~ to assist the Board in its function, and shall define the duties of the positions.

(~~d~~c) **Deputy Executive Director.** When the Executive Director is out of the office, or otherwise engaged, he/she shall designate a deputy director to act. If the position of Executive Director is vacant or the Executive Director has been unable to make the designation, the President of the Board shall designate a deputy director to serve until the next meeting of the Board, at which time the Board shall appoint an acting Executive Director.

[OAR Docket #15-435; filed 6-11-15]

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

[OAR Docket #15-436]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Regulations for Approved Nursing Education Programs
485:10-3-2. [AMENDED]
485:10-3-3. [AMENDED]
Subchapter 5. Minimum Standards for Approved Nursing Education Programs
485:10-5-12. [AMENDED]
Subchapter 6. Minimum Standards for Approved Advanced Practice Registered Nursing (APRN) Education Programs (Effective January 1, 2016) [NEW]
485:10-6-1. Approval of APRN education programs [NEW]
485:10-6-2. Minimum standards for APRN education programs [NEW]
485:10-6-3. Establishment of a new APRN education program in the state of Oklahoma [NEW]
485:10-6-4. Reports to the Board [NEW]
485:10-6-5. Continuing approval of APRN education programs [NEW]
Subchapter 7. Requirements for Registration and Licensure as a Registered Nurse
485:10-7-1. [AMENDED]
485:10-7-2. [AMENDED]
485:10-7-3. [AMENDED]
485:10-7-4. [AMENDED]
485:10-7-5. [AMENDED]
Subchapter 8. Criminal Background Checks for Applicants for Licensure/Certification
485:10-8-1. [AMENDED]
Subchapter 9. Requirements for Registration and Licensure as a Licensed Practical Nurse
485:10-9-1. [AMENDED]
485:10-9-2. [AMENDED]
485:10-9-3. [AMENDED]
485:10-9-4. [AMENDED]
485:10-9-5. [AMENDED]
Subchapter 10. Advanced Unlicensed Assistant
485:10-10-7. [AMENDED]
485:10-10-8. [AMENDED]
485:10-10-8.2. [NEW]
Subchapter 11. Disciplinary Action
485:10-11-2. [AMENDED]
Subchapter 15. Requirements for Practice as an Advanced Practice Registered Nurse
485:10-15-4. [AMENDED]
485:10-15-5. [AMENDED]
485:10-15-6. [AMENDED]
485:10-15-7. [AMENDED]
485:10-15-9.1. [REVOKED]
Subchapter 16. Requirements for Prescriptive Authority for Advanced Practice Registered Nurses
485:10-16-3. [AMENDED]
485:10-16-3.1. [NEW]
485:10-16-6. [AMENDED]

485:10-16-7. [AMENDED]
Subchapter 18. Prescriptive Authority for CRNA
485:10-18-2. [AMENDED]
485:10-18-4. [AMENDED]
485:10-18-5. [AMENDED]

AUTHORITY:
Oklahoma Board of Nursing; 59 O.S. §§ 567.2 A; 567.4.F.; 567.4a; 567.5.B; 567.5.D; 567.5a.B; 567.5a.D.; 567.6.B.; 567.6.D.; 567.6a.B.; 567.7.A.; 567.7.B.; 567.7.C.; 567.8.F.; 567.12; 567.12a; and 567.18

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 6, 2014

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February 3, 2015

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Approved by Governor's declaration on June 8, 2015.

FINAL ADOPTION:
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SUPERSEDED EMERGENCY ACTIONS:

Superseded Rules:
Subchapter 15. Requirements for Practice as an Advanced Practice Registered Nurse
485:10-15-5. [AMENDED]

Gubernatorial approval:
July 31, 2014

Register publication:
31 Ok Reg 698

Docket number:
14-835

INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
Throughout document, titles and rules were revised according to statute. Revisions included deletion of language related to new nursing education program effect on other nursing programs in the area as the Board does not view it appropriate to consider possible business competition when assessing adequacy of a new nursing program.

Requirements for faculty overseeing clinical component of an out-of-state nursing program when clinical component is conducted in Oklahoma were clarified.

Subchapter 6 added new language specific to Board approval of APRN nursing education programs located in Oklahoma in accordance with 59 O.S. §567.12a B., effective 01/01/2016.

Other revisions included adding requirements ensuring competency of exam applicants who successfully passed the NCLEX exam within two years of graduation, yet did not obtain licensure within same two year period; in alignment with SB 1262 (2014), removed statutory requirement of applicants for licensure as an LPN to have high school diploma or GED credential; and clarified hearings and notices are conducted in accordance with Oklahoma APA.

Specific to APRNs, APRNs were added to those required to submit fingerprint CBCs in alignment with statute; new language for temporary licenses for APRN endorsement applicants; emergency Rules approved by the Governor on 7/31/ 2014, allowing APRNs to retake national certification exam to reinstate licensure to supersede via permanent Rule adoption; new language supporting endorsement of prescriptive authority for CNPs, CNMs, and CNSs was added to support statutory authority; consistent language for prescriptive authority reinstatement recognition added option of verification of at least 520 work hours as an APRN in same role with prescriptive authority in another state or territory during past two years preceding receipt of reinstatement application; and clarification of requirements for CRNAs compliance in prescribing controlled substances with state and federal law.

Updating requirements for RN and LPN licensure reinstatement helps protect the public by ensuring consistency with continuing qualifications for licensure requirements. Likewise, Board approval of APRN nursing education programs effective January 1, 2016, in alignment with 59 O.S. §567.12a B., will standardize minimal standards for program approval by the Board. In accordance with current statutory law, endorsement of prescriptive authority for Certified Nurse Practitioners, Certified Nurse Midwives and Clinical Nurse Specialists ensures access by the public to safe, competent health care providers authorized to prescribe medications, treatments and devices.

The agency carefully considered each of the proposed rules to ensure there were no less costly, non-regulatory, or less intrusive methods to implement the statutory requirements and meet the agency's mission of protection of the public. It was determined that each of the rules revisions provides the most effective and fiscally-responsible method for achieving the purpose.

CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. § 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 3. REGULATIONS FOR APPROVED NURSING EDUCATION PROGRAMS

485:10-3-2. Establishment of new nursing education programs

(a) **Step I. Initial application.**

(1) An institution wishing to establish a new nursing education program shall advise the Board of its intent in writing, and shall seek Board consultation in the initial planning.

(2) The institution shall submit the Step I Initial Application to the Board office at least eight weeks prior to a regularly-scheduled Board meeting, which provides the following information for the Board's consideration:

(A) mission and organization of the educational institution;

(B) accreditation status of the educational institution;

(C) type of nursing program to be established;

(D) relationship of nursing program to the educational institution;

(E) documentation of the rationale for the establishment of the nursing program in Oklahoma;

(F) ~~potential effect on other nursing programs in the area;~~

~~(G)~~ tentative time-table for program development and implementation;

(~~H~~G) source of potential qualified Nurse Administrator and faculty, with projected times of employment;

(~~I~~H) tentative budget plans including evidence of financial resources adequate for developing, implementing, and continuing the nursing program;

(~~J~~I) source of anticipated student population;

(~~K~~J) description of support staff for the proposed program;

(~~L~~K) description of physical facilities;

(~~M~~L) description of available clinical resources with letters from clinical resources supporting development of a new program in nursing.

(3) The application shall be signed by the controlling institution's administrative official with evidence that the institution is authorized to offer educational programs in Oklahoma. Regional accreditation is recommended for institutions offering programs in nursing education.

(4) The Board shall advise the institution in writing of its decision to:

(A) approve proceeding with development of the program-Step II; or

(B) defer approval pending a visit to the institution and/or receipt of further information; or

(C) deny approval specifying reasons for denial.

(b) **Step II. Application for Provisional Approval.**

(1) The institution shall employ a qualified Nurse Administrator ensuring adequate time is provided to develop Step II. A consultative visit will be conducted by Board staff at least one month prior to submission of the Step II application. A report of the findings from this visit will be submitted to the Board with the Step II application.

(2) The Nurse Administrator shall prepare the following materials following the Guidelines for Provisional Approval for the Board's consideration:

(A) philosophy, program and course objectives;

(B) curriculum plan;

(C) policy statements;

(D) survey of clinical facilities ~~and existing nursing education programs in the service area~~, with evidence that a sufficient amount and variety of clinical experience is available to support an additional nursing education program in the service area;

(E) faculty qualifications, criteria and job descriptions;

(F) budget plan projected for a three (3) year period;

(G) learning resources; and

(H) institutional and program organizational plans.

(3) At least four months prior to the anticipated admission of students and at least eight weeks prior to a regularly-scheduled Board meeting, the Nurse Administrator shall submit the "Application for Provisional Approval" for Board review.

(4) Nursing education and institutional representatives may be present during the Board meeting. The Board shall advise the institution in writing of its decision to:

(A) grant Provisional Approval, authorizing the institution to proceed with implementation of the nursing education program and admission of students; or

(B) defer Provisional Approval and program implementation pending further development; or

(C) deny Provisional Approval.

(5) The program cannot admit students until Provisional Approval is granted.

(6) Faculty qualification forms must be submitted to the Board and qualified faculty employed at least thirty days prior to the admission of students.

(7) Progress reports shall be made by the Nurse Administrator as requested by the Board while on Provisional Approval.

485:10-3-3. Closing of nursing education programs

(a) **Methods.**

(1) When the decision to close a nursing education program has been made, the program shall advise the Board and submit a written plan for the discontinuation of the program. The closure may be accomplished in one of two ways:

(A) students may be transferred to another approved nursing education program; or

(B) the nursing education program may close gradually by discontinuing student admissions and officially closing the nursing education program on the date that the last student completes the program.

(2) All the requirements and standards for students in the nursing education program shall be maintained until the last student is transferred or completes the nursing education program.

(3) It is recommended that the transfer of students be accomplished in a manner which provides for a minimum loss of student time and credits earned.

(b) **Records.**

(1) The Board shall accept custody of records in the image format designated by the Board in accordance with the procedures in the Board office as defined by the Archives and Records Commission of the Oklahoma Department of Libraries Archives Division. ~~[74 O.S. Sections 564-576]~~[67 O.S. Sections 305-317]

(2) The cost of formatting the record to the designated image and their transfer to the Board office shall be the responsibility of the nursing education program.

SUBCHAPTER 5. MINIMUM STANDARDS FOR APPROVED NURSING EDUCATION PROGRAMS

485:10-5-12. Out-of-State nursing education programs conducting clinical experiences in Oklahoma

(a) Nursing education programs leading to initial licensure that wish to conduct clinical experiences in Oklahoma must obtain prior permission from the Board.

(b) To apply for permission from the Board, the program must submit a letter of request to the Board and provide evidence that the following standards will be met:

(1) The program must be on full approval status with the board of nursing in another member board jurisdiction;

(2) The program will provide for supervision of students while in the clinical area by a nursing faculty member licensed in Oklahoma;

(3) A written clinical affiliation agreement with the clinical facility will be in place; and

(4) If precepted clinical experiences are requested, the program will ensure they are conducted in accordance with the Board's policy.

(c) Registered Nurses enrolled in out-of-state advanced practice registered nursing education programs may participate in clinical experiences and clinical preceptorship in Oklahoma as part of the advanced practice registered nursing education program, under the following conditions:

(1) The advanced practice registered nurse student has an Oklahoma license to practice registered nursing, ~~and~~

(2) The faculty responsible for oversight of the clinical component of the nursing education program has an Oklahoma license to practice nursing at the level of the education being taught or higher, and

(3) The advanced practice registered nursing education program meets the requirements established by the Oklahoma Board of Nursing for education preparation of Advanced Practice Registered Nurses.

SUBCHAPTER 6. MINIMUM STANDARDS FOR APPROVED ADVANCED PRACTICE REGISTERED NURSING (APRN) EDUCATION PROGRAMS (EFFECTIVE JANUARY 1, 2016)

485:10-6-1. Approval of APRN education programs

The Board shall have the authority for approval of APRN education programs located in the state of Oklahoma.

(1) **Purposes of approval.** The purposes of approval of APRN education programs are:

(A) to provide standards for legally recognizing new and established APRN education programs;

(B) to ensure graduates are eligible to take APRN certification examinations;

(C) to ensure that graduates are prepared for safe, current, and appropriate scope of APRN practice relative to the APRN role and population focus.

(2) **Categories of approval.** The categories of approval are:

(A) Provisional Approval:

(i) is granted to new APRN education programs meeting the minimum standards;

(ii) is approval to admit students;

(iii) is effective until the first class has graduated and initial outcomes have been reviewed by the Board.

(B) Full Approval:

(i) is granted to programs after the Board has reviewed initial outcomes, and evidence is provided that minimum standards are met;

(ii) is renewed periodically or reinstated following evaluation by the Board.

(C) Conditional Approval is granted to approved APRN education programs subsequently failing to meet or maintain minimum standards.

(i) The Board shall notify an APRN education program by letter of Conditional Approval, citing a specified time for corrective action. A period of one (1) year shall be the maximum time allowed for the correction of deficiencies resulting in Conditional Approval.

(ii) An APRN education program placed on Conditional Approval may request Board action to remove the conditional status at any time prior to the time limit established by the Board when it can provide evidence that the deficiencies have been corrected.

(iii) An APRN education program shall not admit new students while on Conditional Approval without authorization from the Board.

(iv) A warning may be given allowing an APRN education program an opportunity to address deficiencies as identified by the Board prior to being placed on Conditional Approval. A written report must be submitted to the Board within four (4) months of receiving the warning, and eight (8) weeks prior to the Board meeting.

(v) A change in an APRN education program's approval status shall not affect students who graduate during the time the program is on Conditional Approval.

(3) **Withdrawal of approval.** The APRN education program that fails to correct deficiencies resulting in Conditional Approval shall be discontinued as a State-Approved APRN Education Program. Representatives from the program may attend the Board meeting when the program is reviewed. Upon withdrawal of approval, the program will be notified that those graduating since withdrawal of approval are not eligible for licensure as Advanced Practice Registered Nurses in the state of Oklahoma.

(4) **Closure of an APRN education program.** When an APRN education program is to be closed as a result of a decision of the university, the program shall advise the Board and submit a written plan for the discontinuation of the program. The closure may be accomplished in one of two ways:

(A) students may be transferred to another approved APRN education program; or

(B) the APRN education program may close gradually by discontinuing student admissions and officially closing the APRN education program on the date that the last student completes the program.

(i) All the requirements and standards for students in the APRN education program shall be maintained until the last student is transferred or completes the APRN education program.

(ii) It is recommended that the transfer of students be accomplished in a manner which provides for a minimum loss of student time and credits earned.

(iii) When an APRN education program is to be closed by the Board, the Board shall establish the terms of discontinuation of the program.

(iv) Program records

(I) The Board shall accept custody of records in the image format designated by the Board in accordance with the procedures in the Board office as defined by the Archives and Records Commission of the Oklahoma Department of Libraries Archives Division. [67 O.S. Sections 305-317]

(II) The cost of formatting the record to the designated image and their transfer to the Board office shall be the responsibility of the APRN education program.

485:10-6-2. Minimum standards for APRN education programs

To be approved as an APRN education program in the state of Oklahoma, the program shall meet the following standards:

(1) The APRN education program is a graduate-level program offered by a university accredited by an accrediting body that is recognized by the U.S. Secretary of Education and/or the Council for Higher Education Accreditation (CHEA);

(2) The APRN education program holds accreditation or candidacy status from one of the following:

(A) The Accreditation Commission for Education in Nursing

(B) The Commission on Collegiate Nursing Education

(C) The Commission for Nursing Education Accreditation

(D) The Accreditation Commission for Midwifery Education

(E) The American Association of Nurse Anesthetists' Council on Accreditation of Nurse Anesthesia Educational Programs;

(3) The curriculum of the APRN education program must prepare the graduate to practice in one of the four identified APRN roles (i.e., CRNA, CNM, CNS, or CNP) and in at least one of the six population foci (i.e., Family/Individual across the Lifespan, Adult-Gerontology (acute and/or primary), Neonatal, Pediatrics (acute and/or primary), Women's Health/Gender-Related, or Psychiatric/Mental Health). The curriculum shall include:

(A) Graduate APRN core courses, to include three separate graduate level courses in:

(i) Advanced physiology and pathophysiology, including general principles that apply across the lifespan;

(ii) Advanced health assessment, which includes assessment of all human systems, advanced assessment techniques, concepts and approaches; and

(iii) Advanced pharmacology (a minimum of a three academic credit hour course), which includes pharmacodynamics, pharmacokinetics and pharmacotherapeutics of all broad categories of agents;

(B) Additional core course content, specific to the role and population in APRN core areas, integrated throughout the specific role and population focus didactic and clinical courses, to include the use and prescription of pharmacologic and non-pharmacologic interventions;

(C) Preparation in legal, ethical, and professional responsibilities of the APRN; and

(D) A minimum of 500 supervised clinical hours directly related to each role and population focus, including pharmacotherapeutic management of patients.

(4) An APRN program shall appoint the following personnel:

(A) An APRN program administrator whose qualifications shall include:

(i) A current, unencumbered APRN license in the state of Oklahoma;

(ii) A minimum of a master's degree in nursing and an earned doctoral degree; and

(iii) At least two years of clinical experience as an APRN.

(B) A lead faculty member to coordinate each role and population focus track in the APRN program, including curriculum development, whose qualifications shall include:

(i) A current, unencumbered APRN license in the state of Oklahoma;

(ii) A minimum of a master's degree in nursing that includes preparation in the same role and population focus as the track for which he/she is responsible;

(iii) At least two years of clinical experience as an APRN; and

(iv) Current knowledge, competence and certification as an APRN in the role and population focus consistent with teaching responsibilities.

(v) The APRN program administrator may also serve as the lead faculty member if all qualifications are met. If the APRN program administrator has teaching or other responsibilities, adequate time will be provided to fulfill administrative duties for the APRN education program.

(C) Nursing faculty, including adjunct clinical faculty, to teach any APRN nursing course that includes a clinical learning experience shall meet the following qualifications:

(i) A current, unencumbered APRN license in the state of Oklahoma;

(ii) A minimum of a master's degree in nursing that includes preparation in a role and population focus consistent with teaching responsibilities;

(iii) Two years of APRN clinical experience; and

(iv) Current knowledge, competence and certification as an APRN in the role and population foci consistent with teaching responsibilities.

(D) Interdisciplinary faculty who teach non-clinical nursing courses shall have advanced preparation appropriate to these areas of content.

(E) Clinical preceptors will serve as a role model and educator to the student. Clinical preceptors may be used to enhance faculty-directed clinical learning experiences, but not to replace them.

(F) Clinical preceptors will be approved by faculty and meet the following requirements:

(i) Hold a current, unencumbered license in the state of Oklahoma, or in another state (if employed by the United States Government or any bureau, division, or agency thereof; or if the preceptorship takes place in another state), as an APRN, Medical Doctor, or Doctor of Osteopathy and practices in a comparable practice focus;

(ii) Function as a supervisor and teacher and contribute to the evaluation of the individual's performance in the clinical setting; and

(iii) Have demonstrated competencies related to the area of assigned clinical teaching responsibilities.

(5) Each student enrolled in the APRN program shall have a current, unencumbered Oklahoma Registered Nurse license.

(6) APRN programs preparing for two population foci or a combined nurse practitioner/clinical nurse specialist shall include content and 500 hours of clinical experience in each functional role and population focus.

(7) Advanced placement policies shall allow fair, consistent, valid, and defensible evaluation of students' didactic knowledge and clinical competence. Students admitted with advanced placement must meet the program's APRN outcome competencies.

485:10-6-3. Establishment of a new APRN education program in the state of Oklahoma

(a) An institution wishing to establish a new APRN education program shall submit an application for approval to the Board at least eight weeks prior to a regularly-scheduled Board meeting and at least six months prior to planned admission of the first students, which provides the following information for the Board's consideration:

(1) mission and organization of the education institution;

(2) accreditation or candidacy status of the education institution and of the proposed program;

(3) advanced practice registered nurse role(s) and population focus/foci of the proposed program;

(4) degree to be offered;

(5) degree plan;

(6) tentative time-table for program development and implementation;

(7) proposed size of program;

(8) source of anticipated student population

(9) information on employment opportunities for program graduates;

(10) identification of sufficient financial and other resources;

(11) evidence of governing institution approval and support;

(12) evidence of community support;

(13) evidence of clinical opportunities and availability of resources; and

(14) evidence of availability of qualified faculty.

(b) The application shall be signed by the controlling institution's administrative official with evidence that the institution is authorized to offer education programs in Oklahoma.

(c) The Board shall advise the institution in writing of its decision to:

(1) approve the program; or

(2) defer approval pending receipt of further information; or

(3) deny approval specifying reasons for denial.

485:10-6-4. Reports to the Board

(a) A Board-approved APRN education program shall submit notification to the Board of changes in accreditation status, nurse administrator for the program, or institutional ownership within 30 days of the change.

(b) Upon notification of loss of accreditation status, the program will be removed from the list of Board-approved APRN education programs. The program will be notified that those graduating since loss of accreditation are not eligible for licensure as Advanced Practice Registered Nurses in the state of Oklahoma.

(c) Additions to or changes in the APRN education program that change the advanced practice role, population focus, or degree require approval of the Board prior to implementation.

(d) The APRN education program shall submit reports to the Board as scheduled in the format requested by the Board, providing information on program status and performance.

485:10-6-5. Continuing approval of APRN education programs

(a) APRN education programs with full program approval status will be periodically evaluated for continuing approval by the Board.

(1) An evaluation will be conducted by the Board subsequent to each scheduled visit to the program by the program's Board-recognized national nursing accreditation agency. The Nurse Administrator of the APRN education program or his/her designee shall submit a copy of the notification of accreditation status to the Board within two weeks of receipt, accompanied by the program's accreditation report and supporting documentation.

(2) Additional evaluations may be directed by the Board, if in the Board's opinion, the program may not be in compliance with the Board's APRN education program administrative rules. As a part of this evaluation, the Board may request a survey visit or special report as needed.

(b) The Board shall regularly review and analyze program performance reports submitted by the APRN education programs including, but not limited to:

(1) Results of ongoing program evaluation; and

(2) Other sources of evidence regarding achievement of program outcomes including, but not limited to:

(A) Student retention, attrition, and on-time program completion rates;

(B) Adequate type and number of faculty, faculty competence and faculty retention;

(C) Adequate laboratory and clinical learning experiences;

(D) Trended data on certification pass rates;

(E) Evidence of employer and graduate satisfaction;

(F) Performance improvement initiatives related to program outcomes; and

(G) Program complaints/grievance review and resolution.

(c) Continuing approval will be granted upon the Board's verification that the program is in compliance with the Board's APRN education administrative rules.

SUBCHAPTER 7. REQUIREMENTS FOR REGISTRATION AND LICENSURE AS A REGISTERED NURSE

485:10-7-1. Licensure by examination

(a) **Qualifications.** An applicant for licensure by examination as a Registered Nurse must meet the following qualifications:

(1) Submits an application containing such information as the Board may prescribe;

(2) is a minimum of eighteen (18) years of age on or before the date the license is issued;

(3) Submits proof satisfactory to the Board in such manner and upon such forms as the Board may require to show that the applicant has completed the basic professional curricula of a state Board-approved registered nursing education program conducted in a member board jurisdiction that meets the requirements of 485:10-5-6 (d)(1), (2), and (3), and holds or is entitled to hold a diploma or degree therefrom.

(b) **Applications.** Applications for licensure by examination must be completed and filed with the Board prior to the examination. If the application is not completed within one (1) year, a new application and new fee will be required.

(c) **Admission to the examination.** The candidate must register with the authorized testing service and submit the required fee. An authorization to test will be issued by the testing service allowing the candidate to schedule the examination.

(d) **Fee for examination.**

(1) The fee for writing the licensing examination adopted by the Board for Registered Nurse licensure shall be established by the Board in accordance with statutory guidelines and shall accompany the application.

(2) The fee for rewriting the licensing examination adopted by the Board for Registered Nurse licensure shall be the same as the fee established for the first-time writing.

(3) The fee for the examination is not refundable.

(e) **Policies for the examination.**

(1) Applicants must pass the National Council Licensure Examination for Registered Nurses (NCLEX-RN).

(2) Applicants who fail the NCLEX-RN may be eligible to repeat the examination upon filing an application and fee, and upon meeting Board requirements.

(3) To be eligible to write or rewrite the NCLEX-RN, the applicant must submit a completed application, transcript, and fee to the Board and a completed registration form and fee to the authorized testing service within two years of completion of the nursing education program. If more than two years has elapsed, the applicant must complete additional education as follows:

(A) Successfully complete a Board-approved refresher course in accordance with the Board's policy; or

(B) Successfully complete nursing didactic coursework and faculty-supervised clinical experience in a board-approved nursing education program at the appropriate educational level, to include at least 80 hours in classroom and skills laboratory review and at least 80 hours participating in patient care activities in the clinical setting.

(4) After completion of the required additional education, the applicant will have two years from the completion date of the additional education to take and pass the NCLEX-RN.

(5) If more than two (2) years has elapsed since the applicant successfully passed the NCLEX-RN and did not obtain licensure as a Registered Nurse, the applicant must complete additional education as follows:

(A) Successfully complete a Board-approved refresher course in accordance with the Board's policy; or

(B) Successfully complete nursing didactic coursework and faculty-supervised clinical experience in a Board-approved nursing education program at the appropriate educational level, to include at least 80 hours in classroom and skills laboratory review and at least 80 hours participating in patient care activities in the clinical setting.

485:10-7-2. Licensure by endorsement

(a) **Qualifications.**

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

(2) is a minimum of eighteen (18) years of age on or before the date the license is issued;

(3) An applicant for licensure by endorsement as a Registered Nurse must meet the requirements of the Oklahoma Nursing Practice Act. An evaluation of educational requirements may be completed to ensure the applicant meets educational standards.

(4) An applicant licensed in another state or U.S. territory since January 1, 1952 must have written the licensing examination adopted by the Board with a passing score as established by the Board. A license to practice nursing in Oklahoma will not be issued until this requirement is met.

(5) An applicant must submit evidence of either:

(A) successful completion of the National Council Licensure Examination for Registered Nurses since July 1, 1982; or

(B) passing the State Board Test Pool Examination for Registered Nurse licensure prior to July 1, 1982.

(6) In addition to meeting other requirements for endorsement established by the Board in these Rules, each applicant for endorsement must demonstrate evidence of continued qualifications for practice through completion of one or more of the following requirements within the last two (2) years prior to receipt of the completed application in the Board office:

(A) Submission of an official transcript or certificate of completion verifying completion of a nurse refresher course with content consistent with Board policy;

(B) Successfully pass the National Council Licensure Examination for Registered Nurses;

(C) Submission of an official transcript verifying successful completion of at least six (6) academic semester credit hours of nursing courses which include classroom and clinical instruction; and/or

(D) Present evidence of licensure as a registered nurse in another state, territory or country with employment in a position that requires nursing licensure with verification of at least 520 work hours during the past two (2) years.

(7) Applicants for endorsement who took the National Council Licensure Examination for Registered Nurses for initial licensure within the last two years must:

(A) Provide evidence of completion of the nursing education program within two years of initial application for licensure by examination; or

(B) Provide evidence of at least six months work experience as a registered nurse in the state, U.S. territory, or country of licensure.

(b) **Applications.**

(1) Applications must be completed and filed with the Board.

(2) Endorsement may be accepted from the original state or U.S. territory of licensure by examination.

(3) If the applicant has written the licensing examination adopted by the Board in a state other than the state or U.S. territory of original licensure, an endorsement will be requested from that state, also.

(4) If the application is not completed within one (1) year after receipt of fee, the application must be refiled.

(c) **Fee for licensure by endorsement.**

(1) The fee shall accompany the application.

(2) The fee is not refundable.

(3) If the application is not completed within one (1) year, a new application and new fee will be required for licensure.

(d) **Qualifications for applicants educated in foreign countries or in a U.S. territory.** An applicant educated in a foreign country must meet the current educational requirements for licensure in Oklahoma. An applicant educated in a U.S. territory not recognized as a full member of National Council of State Boards of Nursing (NCSBN) must meet the requirements for applicants educated in foreign countries. An applicant educated in a U.S. territory that is a full member of NCSBN but in a nursing education program not included on the NCSBN state-approved programs of nursing list at the time of the applicant's graduation from the program must meet the requirements for applicants educated in foreign countries.

(1) The applicant must present evidence of:

(A) graduation from a government-approved post-secondary nursing education program, as verified from the Commission of Graduates of Foreign Nursing Schools (CGFNS);

(B) completion of formal courses including theory and clinical experience in nursing care of the adult, nursing care of children, maternal-infant nursing, psychiatric-mental health nursing as evidenced by:

(i) a translated transcript with certified proof of translation received directly from the nursing education program in the original country of licensure, or

(ii) a certified copy of original transcript obtained directly from the Commission of Graduates of Foreign Nursing Schools (CGFNS)

(C) licensure or registration as required in country of graduation as evidenced by official verification received directly from the Commission of Graduates of Foreign Nursing Schools;

(D) current competence in oral and written English as evidenced by receipt of current, valid scores directly from the approved testing service or from CGFNS verifying successful completion of:

(i) Test of English for International Communication (TOEIC), to include the Listening and Reading Test, and the Speaking and Writing Test of the Educational Testing Service, or

(ii) International English Language Testing System (IELTS), or

(iii) Test of English as a Foreign Language Internet-based test (TOEFL iBT) of the Educational Testing Service, or

(iv) Michigan English Language Assessment Battery (MELAB).

(E) An evaluation of educational credentials as evidenced by:

(i) CGFNS Certificate Status or Visa Screen Certificate; or

(ii) CGFNS Healthcare Profession and Science Course-by-Course Report or Credentials Evaluation Service Professional Report;

(iii) Reports received from CGFNS must have been completed within the five (5) years immediately preceding the date of application for licensure by endorsement. The five-year requirement is waived if the applicant holds a license in another state.

(F) Evidence of either:

(i) successful completion of the National Council Licensure Examination for Registered Nurses since July 1, 1982; or

(ii) passing the State Board Test Pool Examination for Registered Nurse licensure prior to July 1, 1982;

(2) The requirements for competence in spoken and written English are waived for applicants who are:

(A) Graduates of nursing education programs taught in English in Australia, Canada (except Quebec), Ireland, New Zealand, the United Kingdom, Trinidad, Tobago, Jamaica, Barbados, South Africa, and the United States.

(B) Licensed in another US State or Territory, have successfully completed the licensure examination approved by the Board and provide evidence of at least one year full-time equivalent work experience in a clinical setting as a ~~registered nurse~~ Registered Nurse in the state or territory of licensure.

(3) Applicants must submit a completed application and the required fee.

(e) **Temporary license for endorsement applicants.**

(1) A temporary license may be issued to the applicant on proof of:

(A) Current unrestricted licensure in another state, territory or country with no history of arrest or disciplinary action requiring further review;

(B) Evidence of having successfully passed the licensure examination adopted by the Oklahoma Board of Nursing;

(C) Evidence of meeting educational qualifications through completion of a state board-approved nursing education program meeting the educational standards established by the Board, or an evaluation of educational credentials and nursing licensure or registration as required in country of origin for the foreign-educated nurse as evidenced by:

(i) Commission on Graduates of Foreign Nursing Schools (CGFNS) Healthcare Profession and Science Course-by-Course Report or Credentials Evaluation Service Professional Report with verification of equivalent educational credentials and unrestricted licensure in country of origin, or

(ii) Commission on Graduates of Foreign Nursing Schools (CGFNS) Certificate status or Visa Screen Certificate, accompanied by a verification of graduation from a government approved nursing education program, the translated transcript, and verification of unrestricted nursing licensure or registration as required in country of graduation;

(D) Payment of the fee for licensure by endorsement and temporary license;

(E) Foreign-educated applicants must provide evidence of current competence in oral and written English by meeting the requirements of 485:10-7-2(d)(1)(D) unless 485:10-7-2(d)(2) applies;

(F) Demonstrating evidence of continued qualifications for practice through meeting the requirements of 485:10-7-2(a)(6) and (7); and

(G) Submission of fingerprint images with the fee established by the Oklahoma State Bureau of Investigation and/or vendor for the purpose of permitting a state and national criminal history records search to be completed.

(2) The temporary license may not be issued for a period longer than ninety (90) days.

(3) The temporary license may be extended, but such period shall be no longer than one (1) year for any applicant.

485:10-7-3. Renewal of [RN] license

(a) All Registered Nurse licenses issued may be renewed in accordance with the schedule published by the Board.

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

(c) The application for renewal of license must be completed and accompanied by the established fee before a new license is issued.

(d) The fee for renewal of license shall be established by the Board in accordance with statutory guidelines.

(e) In addition to meeting other requirements for renewal established by the Board in these Rules, effective January 1, 2014, each licensee shall demonstrate evidence of continuing qualifications for practice through completion of one or more of the following requirements within the past two years prior to the expiration date of the license:

(1) Verify employment in a position that requires a registered nurse license with verification of at least 520 work hours; or

(2) Verify the completion of at least twenty-four (24) contact hours of continuing education applicable to nursing practice; or

(3) Verify current certification in a nursing specialty area; or

(4) Verify completion of a Board-approved refresher course; or

(5) Verify completion of at least six (6) academic semester credit hours of nursing coursework at the licensee's current level of licensure or higher.

(f) If audited, the licensee shall present documentation supporting the continuing qualifications.

485:10-7-4. Reinstatement of license

(a) The Registered Nurse license is lapsed if not renewed by expiration date thereof.

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

(c) A completed application for reinstatement must be submitted to the Board office with the required fee. If the application is not completed within one (1) year, a new application and new fee will be required.
(d) The fee for reinstatement of license shall be established by the Board.
(e) An application for reinstatement for a license that has been suspended or surrendered must be in compliance with all terms and conditions of any Order entered with regard to the suspension or surrender and shall be considered by the Board.
(f) An application for reinstatement of a license that has been revoked by the Board shall be considered by the Board.
(g) An application for reinstatement for a license not previously revoked, suspended or surrendered may be granted on such terms and conditions as the Board may require.
(h) In addition to meeting other reinstatement requirements established by the Board in these Rules, if the Oklahoma nursing license has ~~lapsed~~not been in an active status less than two years, each applicant shall demonstrate evidence of continuing qualifications for practice through completion of one or more of the following requirements within the last two (2) years prior to receipt of the completed application in the Board office:

(1) Verify employment in a position that requires a registered nurse license with verification of at least 520 work hours; or
(2) Verify the completion of at least twenty-four (24) contact hours of continuing education applicable to nursing practice; or
(3) Verify current certification in a nursing specialty area; or
(4) Verify completion of a Board-approved refresher course; or
(5) Verify completion of at least six (6) academic semester credit hours of nursing coursework at the licensee's current level of licensure or higher.

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

(1) Submission of an official transcript or certificate of completion verifying completion of a nurse refresher course with content consistent with Board policy;
(2) Successfully pass the National Council Licensure Examination for Registered Nurses;
(3) Submission of an official transcript verifying successful completion of at least six (6) academic semester credit hours of nursing courses which include classroom and clinical instruction; and/or
(4) Present evidence of licensure as a ~~registered nurse~~Registered Nurse in another state, territory or country with employment in a position that requires nursing licensure with verification of at least 520 work hours during the past two (2) years preceding receipt of the application for reinstatement in the Board office.

485:10-7-5. Inactive status

(a) Any Registered Nurse licensee who desires to retire from the practice of nursing shall submit a written request to be placed on the Inactive List.
(b) The date of transfer to the inactive status will be the date of approval by the Board. The Board may delegate approval of the licensee's request to be placed on inactive status to the Board Staff.
(c) A licensee shall remain on the Inactive List unless otherwise indicated without the payment of the renewal fee.
(d) The return to active fee shall be due when the licensee desires to return to active practice. The applicant must submit an application containing such information as the Board may prescribe.
(e) An application for return to active status for a license that has been placed on Inactive Status by Order of the Board shall be considered by the Board.
(f) In addition to meeting other requirements to return to active status as established by the Board in these ~~rules~~Rules, if the nursing license has been on the Inactive List for a period of two (2) years or more, the licensee must demonstrate continued qualifications for practice through completion of one or more of the following requirements within the last two (2) years prior to receipt of the completed application in the Board office:

(1) Submission of an official transcript or certificate of completion verifying completion of a nursing refresher course with content consistent with Board policy;
(2) Successfully pass the National Council Licensure Examination for Registered Nurses;
(3) Submission of an official transcript verifying successful completion of at least six (6) academic semester credit hours of nursing courses which include classroom and clinical instruction; and/or
(4) Present evidence of licensure as a nurse in another state, territory or country with employment in a position that requires nursing licensure with verification of at least 520 work hours during the past two (2) years preceding receipt of the request for return to active status in the Board office.

(g) In addition to meeting other reinstatement requirements established by the Board in these Rules, if the Oklahoma nursing license has been inactive less than two years, each applicant shall demonstrate evidence of continuing qualifications for practice through completion of one or more of the following requirements within the last two (2) years prior to receipt of the completed application in the Board office:

(1) Verify employment in a position that requires a registered nurse license with verification of at least 520 work hours; or
(2) Verify the completion of at least twenty-four (24) contact hours of continuing education applicable to nursing practice; or
(3) Verify current certification in a nursing specialty area; or
(4) Verify completion of a Board-approved refresher course; or

(5) Verify completion of at least six (6) academic semester credit hours of nursing coursework at the licensee's current level of licensure or higher.

SUBCHAPTER 8. CRIMINAL BACKGROUND CHECKS FOR APPLICANTS FOR LICENSURE/CERTIFICATION

485:10-8-1. Requirements for criminal background checks for initial licensure/certification in this state

(a) All applications for advanced practice registered nurse, registered nurse or practical nurse licensure by examination or endorsement or for certification as an Advanced Unlicensed Assistant shall include a state and national criminal history records search.

(b) Each applicant for licensure shall have a fingerprint-based background check not more than ninety (90) days old at the time of submission of the application for initial, endorsement or higher level of licensure. ~~An applicant who has submitted fingerprint images that were used for the purpose of permitting a state and national criminal history records search with a previous application submitted to the Board within the last twelve (12) months or submitted to the Board after the implementation of the federal continuous Record of Arrest reports is exempt from this requirement.~~

(c) The fingerprint images will be accompanied by ~~a~~an electronic payment, money order or cashier's check made payable to the OSBI or the Board's designated vendor for the fee established by the OSBI and/or vendor.

SUBCHAPTER 9. REQUIREMENTS FOR REGISTRATION AND LICENSURE AS A LICENSED PRACTICAL NURSE

485:10-9-1. Licensure by examination

(a) **Qualifications.** An applicant for licensure by examination as a Licensed Practical Nurse must meet the following qualifications:

(1) ~~has received a high school diploma or a General Educational Development certificate (GED);~~

~~(2)~~ is a minimum of eighteen (18) years of age on or before the date the license is issued;

(~~3~~2) submits an application containing such information as the Board may prescribe;

(~~4~~3) submits proof satisfactory to the Board in such manner and upon such forms as the Board may require to show that the applicant has completed the basic curricula of a state Board-approved practical nursing education program conducted in a member board jurisdiction that meets the requirements of 485:10-5-6(e)(1) and (2), and holds or is entitled to hold a diploma or degree therefrom; or

(~~5~~4) has completed equivalent courses through one of the following methods:

(A) in a state approved program of nursing with a minimum overall grade point average of 2.0, and a grade of a "C" or higher in all nursing courses. Evidence must be provided that verifies successful completion of a minimum of one academic year of instruction in a registered nursing education program, including classroom instruction and clinical practice in nursing care of the adult, nursing care of children, and maternal-infant nursing. Course content in anatomy and physiology, growth and development, mental health, pharmacology and nutrition also must have been successfully completed. Courses in external degree programs or completed by challenge examination are not acceptable for PN equivalency; or

(B) has completed a registered nursing education program in a foreign country and meets the requirements of 485:10-7-2(d).

(~~6~~5) Board-approved role transition learning packet related to legal and ethical aspects of practical nursing must be successfully completed by all PN equivalency applicants prior to approval to write the examination for licensure.

(b) **Applications.** Applications for licensure by examination must be completed and filed with the Board prior to the examination. If the application is not completed within one (1) year, a new application and new fee will be required.

(c) **Admission to the examination.** The candidate must register with the authorized testing service and submit required fee. An authorization to test will be electronically mailed to the candidate by the testing service allowing them to schedule the exam.

(d) **Fee for examination.**

(1) The fee for writing the licensing examination adopted by the Board for practical nurse licensure shall be established by the Board in accordance with statutory guidelines and shall accompany the application.

(2) The fee for rewriting the licensing examination adopted by the Board for practical nurse licensure shall be the same as the fee established for the first-time writing.

(3) The fee for the examination (first time and rewrite) is not refundable.

(e) **Policies for the examination.**

(1) Applicants must pass the National Council Licensure Examination for Practical Nurses (NCLEX-PN).

(2) Applicants who fail the NCLEX-PN may be eligible to repeat the examination upon filing an application and fee meeting Board requirements.

(3) To be eligible to write or rewrite the NCLEX-PN, the applicant must submit a completed application, transcript, and fee to the Board and a completed registration form and fee to the authorized testing service within two years of completion of the nursing education program or the equivalent coursework and/or related experience. If more than two years has elapsed, the applicant must complete additional education as follows:

(A) Successfully complete a Board-approved refresher course in accordance with the Board's policy; or

(B) Successfully complete nursing didactic coursework and faculty-supervised clinical experience in a board-approved nursing education program at the appropriate educational level, to include at least 80 hours in classroom and skills laboratory review and at least 80 hours participating in patient care activities in the clinical setting.

(4) After completion of the required additional education, the applicant will have two years from the completion of the additional education to take and pass the NCLEX-PN.

(5) If more than two (2) years has elapsed since the applicant successfully passed the NCLEX-PN and did not obtain licensure as a Licensed Practical Nurse, the applicant must complete additional education as follows:

(A) Successfully complete a Board-approved refresher course in accordance with the Board's policy; or

(B) Successfully complete nursing didactic coursework and faculty-supervised clinical experience in a Board-approved nursing education program at the appropriate educational level, to include at least 80 hours in classroom and skills laboratory review and at least 80 hours participating in patient care activities in the clinical setting.

485:10-9-2. Licensure by endorsement

(a) **Qualifications.**

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

(2) is a minimum of eighteen (18) years of age on or before the date the license is issued;

(3) ~~has received a high school diploma or a General Educational Development certificate (GED)~~

~~(4)~~ An applicant for licensure by endorsement as a Licensed Practical Nurse shall meet the requirements of the Oklahoma Nursing Practice Act. An evaluation of educational requirements may be completed to ensure the applicant meets educational standards.

(~~5~~4) An applicant licensed in another state or U.S. territory since June 30, 1954, must have passed the licensing examination adopted by the Board. A license to practice practical nursing in Oklahoma will not be issued until this requirement is met.

(~~6~~5) In addition to meeting other requirements for endorsement established by the Board in these rules, each applicant for endorsement must demonstrate evidence of continued qualifications for practice through completion of one or more of the following requirements within the last two (2) years prior to receipt of the completed application in the Board office:

(A) Submission of an official transcript or certificate of completion verifying completion of a nurse refresher course with content consistent with Board policy;

(B) Successfully pass the National Council Licensure Examination for Practical Nurses;

(C) Submission of an official transcript verifying successful completion of at least six (6) academic semester credit hours or 105 contact hours of nursing courses in a state-approved practical or registered nursing education program, which includes classroom and clinical instruction; and/or

(D) Present evidence of licensure as a practical nurse in another state, territory or country with employment in a position that requires practical nursing licensure with verification of at least 520 work hours during the past two (2) years.

(~~7~~6) Applicants for endorsement who took the National Council Licensure Examination for Practical Nurses for initial licensure within the last two years must:

(A) Provide evidence of completion of the nursing education program within two years of initial application for licensure by examination; or

(B) Provide evidence of at least six months work experience as a ~~practical nurse~~ Licensed Practical Nurse in the state, U.S. territory, or country of licensure.

(b) **Applications.**

(1) Applications must be completed and filed with the Board.

(2) Endorsement may be accepted from the original state of licensure by examination.

(3) If the applicant has written the licensing examination adopted by the Board in a state other than the state or U.S. territory of original licensure, an endorsement will be requested from that state, also.

(4) If the application is not completed within one (1) year after receipt of fee, the application must be refiled.

(c) **Fee for licensure by endorsement.**

(1) The fee shall accompany the application.

(2) The fee is not refundable.

(3) If the application is not completed within one (1) year, a new application and new fee will be required for licensure.

(d) **Qualifications for applicants educated in foreign countries or in a U.S. territory.** An applicant educated in a foreign country must meet the current educational requirements for licensure in Oklahoma. An applicant educated in a U.S. territory not recognized as a full member of National Council of State Boards of Nursing (NCSBN) must meet the requirements for applicants educated in foreign countries. An applicant educated in a U.S. territory that is a full member of NCSBN but in a nursing education program not included on the NCSBN state-approved programs of nursing list at the time of the applicant's graduation from the program must meet the requirements for applicants educated in foreign countries.

(1) The applicant must present evidence of:

(A) ~~completion of a high school diploma or a General Educational Development certificate (GED);~~

~~(B)~~ current competence in oral and written English as evidenced by receipt of current, valid scores

directly from the testing service or from CGFNS verifying successful completion of:

(i) Test of English for International Communication (TOEIC), to include the Listening and Reading Test, and the Speaking and Writing Test of the Educational Testing Service; or

(ii) International English Language Testing System (IELTS); or

(iii) Test of English as a Foreign Language Internet-based test (TOEFL iBT) of the Educational Testing Service; or

(iv) Michigan English Language Assessment Battery (MELAB).

(~~C~~B) graduation from a government approved post-secondary practical nursing education program or equivalent courses in a government approved post-secondary nursing education program, as verified from the Commission of Graduates of Foreign Nursing Schools (CGFNS);

(~~D~~C) licensure or registration as required in country of graduation as evidenced by official verification completed within the last twelve (12) months immediately preceding the date of application for licensure by endorsement received directly from the Commission of Graduates of Foreign Nursing Schools,

(~~E~~D) completion of formal courses including theory and clinical experience in nursing care of the adult, nursing care of children, and maternal-infant nursing in a government-approved school of nursing as evidenced by:

(i) a translated transcript received directly from the nursing education program in the original country of licensure with certified proof of translation; or

(ii) a certified copy of the transcript received directly from the Commission on Graduates of Foreign Nursing Schools (CGFNS).

(~~F~~E) An evaluation of educational credentials as evidenced by:

(i) Commission on Graduates of Foreign Nursing Schools (CGFNS) Healthcare Profession and Science Course-by-Course Report or Credentials Evaluation Service Professional Report, or

(ii) Commission on Graduates of Foreign Nursing Schools (CGFNS) Certificate or Visa Screen Certificate status;

(iii) Reports received from CGFNS must have been completed within the five (5) years immediately preceding the date of application for licensure by endorsement. The five-year requirement is waived if the applicant holds a license in another state.

(2) The applicant must successfully complete the licensing examination adopted by the Oklahoma Board of Nursing.

(3) The requirements for competence in spoken and written English are waived for applicants who are:

(A) Graduates of nursing education programs taught in English in Australia, Canada (except Quebec), Ireland, New Zealand, the United Kingdom, Trinidad, Tobago, Jamaica, Barbados, South Africa, and the United States, or

(B) Licensed in another US State or Territory, have successfully completed the licensure examination approved by the Board and provide evidence of at least one year full-time equivalent work experience in a clinical setting as a ~~practical nurse~~ Licensed Practical Nurse in the state or territory of licensure.

(4) Applicants must submit a completed application with the required application and evaluation fees.

(e) **Temporary license for endorsement applicants.**

(1) A temporary license may be issued to the applicant on proof of

(A) Current unrestricted licensure in another state, territory or country with no history of arrest or disciplinary action requiring further review;

(B) Evidence of having successfully passed the licensure examination adopted by the Oklahoma Board of Nursing;

(C) Evidence of meeting educational qualifications through completion of a state board-approved nursing education program meeting the educational standards established by the Board, or an evaluation of educational credentials and nursing licensure or registration as required in country of origin for the foreign-educated nurse as evidenced by:

(i) Commission on Graduates of Foreign Nursing Schools (CGFNS) Healthcare Profession and Science Course-by-Course Report or Credentials Evaluation Service Professional Report with verification of equivalent educational credentials and unrestricted licensure in country of origin, or

(ii) Commission on Graduates of Foreign Nursing Schools (CGFNS) Certificate status or Visa Screen Certificate, accompanied by a verification of graduation from a government approved nursing education program, the translated transcript, and verification of unrestricted nursing licensure or registration as required in country of graduation;

(D) Payment of the fee for licensure by endorsement and temporary license;

(E) Foreign-educated applicants must provide evidence of current competence in oral and written English by meeting the requirements of 485:10-9-2(d)(1)(B) unless 485:10-9-2(d)(3) applies; and

(F) Demonstrating evidence of continued qualifications for practice through meeting the requirements of 485:10-9-2(a)(5) and (6); and

(G) Submission of fingerprint images with the fee established by the Oklahoma State Bureau of Investigation and/or vendor for the purpose of permitting a state and national criminal history records search to be completed.

(2) The temporary license may not be issued for a period longer than ninety (90) days.

(3) The temporary license may be extended, but such period shall be no longer than one (1) year.

485:10-9-3. Renewal of [LPN] license

(a) All licenses issued may be renewed in accordance with a schedule published by the Board.

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

(c) The application for renewal of license must be completed and accompanied by the established fee before a new license is issued.

(d) The fee for renewal of license shall be established by the Board in accordance with statutory guidelines.

(e) In addition to meeting other requirements for renewal established by the Board in these Rules, effective January 1, 2014, each licensee shall demonstrate evidence of continuing qualifications for practice through completion of one or more of the following requirements within the past two years prior to the expiration date of the license:

(1) Verify employment in a position that requires a practical nurse license with verification of at least 520 work hours; or

(2) Verify the completion of at least twenty-four (24) contact hours of continuing education applicable to nursing practice; or

(3) Verify current certification in a nursing specialty area; or

(4) Verify completion of a Board-approved refresher course; or

(5) Verify completion of at least six (6) academic semester credit hours of nursing coursework at the licensee's current level of licensure or higher.

(f) If audited, the licensee shall present documentation supporting the continuing qualifications.

485:10-9-4. Reinstatement of license

(a) The Licensed Practical Nurse license is lapsed if not renewed by expiration date thereof.

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

(c) A completed application for reinstatement must be submitted to the Board office with the required fee. If the application is not completed within one (1) year, a new application and new fee will be required.

(d) The fee for reinstatement of license shall be established by the Board.

(e) An application for reinstatement for a license that has been suspended or surrendered must be in compliance with all terms and conditions of any Order entered with regard to the suspension or surrender and shall be considered by the Board.

(f) An application for reinstatement of a license that has been revoked by the Board shall be considered by the Board.

(g) An application for reinstatement for a license not previously revoked, suspended or surrendered may be granted on such terms and conditions as the Board may require.

(h) In addition to meeting other reinstatement requirements established by the Board in these Rules, if the Oklahoma nursing license has ~~lapsed~~not been in an active status less than two years, each applicant shall demonstrate evidence of continuing qualifications for practice through completion of one or more of the following requirements within the last two (2) years prior to receipt of the completed application in the Board office:

(1) Verify employment in a position that requires a ~~registered~~practical nurse license with verification of at least 520 work hours; or

(2) Verify the completion of at least twenty-four (24) contact hours of continuing education applicable to nursing practice; or

(3) Verify current certification in a nursing specialty area; or

(4) Verify completion of a Board-approved refresher course; or

(5) Verify completion of at least six (6) academic semester credit hours of nursing coursework at the licensee's current level of licensure or higher.

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

(1) Submission of an official transcript or certificate of completion verifying completion of a nurse refresher course with content consistent with Board policy;

(2) Successfully pass the National Council Licensure Examination for Practical nurses;

(3) Submission of an official transcript verifying successful completion of at least six (6) academic semester credit hours or 105 contact hours of nursing courses in a state-approved practical or registered nursing education program, which includes classroom and clinical instruction; and/or

(4) Present evidence of licensure as a practical nurse in another state, territory or country with employment in a position that requires practical nursing licensure with verification of at least 520 work hours during the past two (2) years preceding receipt of the application for reinstatement in the Board office.

485:10-9-5. Inactive status

(a) Any licensee who desires to retire from the practice of practical nursing shall submit a written request to be placed on the inactive list.

(b) The date of transfer to the inactive status will be the date of approval by the Board. The Board may delegate approval of the licensee's request to be placed on inactive status to the Board Staff.

(c) A licensee shall remain on the Inactive List unless otherwise indicated without the payment of the renewal fee.

(d) The return to active fee shall be due when the licensee desires to return to active practice. The applicant must submit an

application containing such information as the Board may prescribe.

(e) An application for return to active status for a license that has been placed on Inactive Status by Order of the Board shall be considered by the Board.

(f) In addition to meeting other requirements to return to active status as established by the Board in these rules, if the practical nursing license has been on the Inactive List for a period of two (2) years or more, the licensee must demonstrate continued qualifications for practice through completion of one or more of the following requirements within the last two (2) years prior to receipt of the completed application in the Board office:

(1) Submission of an official transcript or certificate of completion verifying completion of a nursing refresher course with content consistent with Board policy;

(2) Successfully pass the National Council Licensure Examination for Practical Nurses;

(3) Submission of an official transcript verifying successful completion of at least six (6) academic semester credit hours or 105 contact hours of nursing courses in a state-approved practical or registered nursing education program, which includes classroom and clinical instruction; and/or

(4) Present evidence of licensure as a practical nurse in another state, territory or country with employment in a position that requires practical nursing licensure with certification of at least 520 work hours during the past two (2) years preceding receipt of the request for return to active status in the Board office.

(g) In addition to meeting other reinstatement requirements established by the Board in these Rules, if the Oklahoma nursing license has lapsed less than two years, each applicant shall demonstrate evidence of continuing qualifications for practice through completion of one or more of the following requirements within the last two (2) years prior to receipt of the completed application in the Board office:

(1) Verify employment in a position that requires a practical nurse license with verification of at least 520 work hours; or

(2) Verify the completion of at least twenty-four (24) contact hours of continuing education applicable to nursing practice; or

(3) Verify current certification in a nursing specialty area; or

(4) Verify completion of a Board-approved refresher course; or

(5) Verify completion of at least six (6) academic semester credit hours of nursing coursework at the licensee's current level of licensure or higher.

SUBCHAPTER 10. ADVANCED UNLICENSED ASSISTANT

485:10-10-7. Certification

(a) The Board shall establish and maintain a listing (registry) of persons authorized to function as an Advanced Unlicensed Assistant.

(b) An applicant for certification by examination as an Advanced Unlicensed Assistant must meet the following requirements:

(1) has successfully completed the prescribed curricula in a state-approved education program for Advanced Unlicensed Assistants and holds or is entitled to hold a diploma or certificate therefrom; or

(2) has successfully completed an equivalent course approved by the Board in a formal program of instruction in a health-care facility or an educational institution with classroom/laboratory instruction and supervised clinical experience. Evidence must be provided that verifies ability to safely and accurately perform each core skill included in Board-approved Advanced Unlicensed Assistant course;

(3) is a minimum of eighteen (18) years of age on or before the date the certificate is issued

(c) Application for certification:

(1) Applications for certification must be filed with the Board in accordance with the procedure designated by the Board. The application must be complete. The required fee must be filed with the application. If the application is not completed within one (1) year, a new application and new fee will be required.

(2) The candidate must register with the authorized testing service and submit the required fee.

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

(d) Fee for certification:

(1) The fees for certification and writing the certification examination adopted by the Board shall accompany the applications.

(2) The fee for rewriting the certification examination adopted by the Board shall be the same as the fee established for the first-time writing.

(3) The fee for the examination is not refundable.

485:10-10-8. Recertification

(a) Certification as an Advanced Unlicensed Assistant (AUA) shall be renewed every two years in accordance with the schedule published by the Board.

(b) The application for recertification must be completed and accompanied by the established fee before a new certificate is issued.

(c) The applicant must submit an application containing such information as the Board may prescribe. If the application is not completed within one (1) year, a new application and new fee will be required.

(d) The application for recertification must be accompanied by one of the following:

(1) verification of employment as an AUA in an acute care setting for a minimum of 12 months within the previous 24 months immediately prior to renewal of AUA certification; or

(2) verification of successful completion of twelve hours of clinical inservice appropriate to the AUA role within the previous 24 months; or

(3) rewriting the certification examination with a passing score, both the written and core skills portions of the exam, within the 24 months immediately preceding renewal of AUA certification; or

(4) verification of initial certification as an AUA within the 24 months immediately prior to renewal of AUA certification.

(e) The fee for renewal of the certificate shall be established by the Board.

485:10-10-8.2. Inactive status

(a) Any Advanced Unlicensed Assistant (AUA) who desires to retire from the practice of advanced unlicensed assistant practice shall submit a written request to be placed on the Inactive List.

(b) The date of the transfer to inactive status will be the date of approval by the Board. The Board may delegate approval of the certificate holder's request to be placed on inactive status to the Board Staff.

(c) A certificate holder shall remain on the Inactive List unless otherwise indicated without the payment of the renewal fee.

(d) The return to active status fee shall be due when the certificate holder desires to return to active practice. The applicant must submit an application containing such information as the Board may prescribe. If the application is not completed within one (1) year, a new application and new fee will be required.

(e) An application to return to active status for a certificate that has been placed on Inactive Status by Order of the Board shall be considered by the Board.

(f) In addition to meeting other requirements to return to active status as established by the Board in these Rules, if the certification has been on the Inactive List, the application for reinstatement must be accompanied by one of the following:

(1) verification of employment as an AUA in an acute care setting for a minimum of 12 months within the previous 24 months; or

(2) verification of successful completion of twelve hours of clinical inservice appropriate to the AUA role within the previous 24 months; or

(3) rewriting the certification examination with a passing score, both the written and core skills portions of the exam; or

(4) verification of initial certification as an AUA within the 24 months immediately prior to reinstatement of AUA certification.

SUBCHAPTER 11. DISCIPLINARY ACTION

485:10-11-2. Hearings

(a) **Conduct of hearing.** All hearings and notice thereof shall be conducted and governed in accordance with the provisions of the Oklahoma Administrative Procedures Act. [75 O.S. Section 309 *et seq.*]

(b) ~~**Notice of hearing.** Notice of the hearing shall be served in any manner authorized by the Oklahoma Pleading Code for the personal service of summons in proceedings in state courts.~~

~~(c)~~ **Procedures before the Board.**

(1) Every individual proceeding shall be initiated by a sworn complaint containing a brief statement of the facts supporting the request for action by the Board.

(2) The respondent shall file with the Board a written response under oath to the Complaint by the date to be furnished. If no response is filed, the Respondent shall be considered in default and the Board may take whatever action it deems sufficient and appropriate. The Executive Director of the Board or designee may extend the time within which a response must be filed, but in no event may the time be extended beyond the hearing date.

(3) Written requests for continuances shall be received in the Board office not less than four (4) business days prior to the date and time set for the hearing. The request shall state the reasons for the request and time period desired. The Board or its designee shall promptly rule on such requests.

(4) Discovery shall be conducted in accordance with the Administrative Procedures Act except that all discovery must be completed ten (10) days prior to the date set for hearing unless otherwise ordered by the Board.

(5) ~~The order of procedure shall be the same as followed by the state trial courts in civil proceedings.~~The order of procedure at the hearing shall be as follows: (1) presentation of evidence by both parties followed by cross-examination and rebuttal of witnesses, questions by State Board members; (2) closing arguments by legal counsel of both parties; and (3) submission of case to Board for decision.

(6) The admissibility of evidence shall be governed by the provisions of the Oklahoma Administrative Procedures Act [75 O.S. Section 310].

(7) The President of the Board or his/her designee shall rule on admissibility of evidence and objections to such evidence and shall rule on other motions or objections in the course of the hearing.

(8) The Board, its designee, attorney for the Board, the respondent or attorney for the respondent, may conduct examinations.

(9) A respondent who fails to appear, after having received proper notice, may be determined to have waived the right to present a defense to the charges in the complaint and the Board may declare the respondent in default and revoke, suspend or otherwise discipline respondent as it may deem necessary.

(10) Subpoenas for the attendance of witnesses and/or furnishing of information required by the Board staff and as requested by the respondent, and/or the production of evidence or records of any kind shall be issued by the

Director of the Investigative Division or the Director's designee.

(A) In all cases where a party desires to have subpoenas or subpoenas duces tecum issued to compel the attendance of witnesses, or production of documents, a written request shall be filed with the administrative office of the Board by such party or his attorney, and directed to the Director of the Investigative Division or the Director's designee. The Director of the Investigative Division or the Director's designee shall have three (3) business days to process the request. The request shall specify the witness by name and address; and shall identify any documents to be subpoenaed. The request shall acknowledge that any expense associated with the subpoena process shall be paid by the party requesting the subpoena, including travel expense and daily attendance fees, in the amount as set by statute for other civil matters, at the time of the service of such subpoena.

(B) The Director of the Investigative Division or the Director's designee shall cause such subpoenas to be issued and mailed in conformity with said written requests; provided, that in said subpoena the witnesses named therein shall be advised that they may demand their travel fees and daily attendance fees from the party, or his representative; and that neither the Board nor the State of Oklahoma shall be responsible for any traveling fees, daily attendance fees, or other expenses incurred by such witness in attending any proceeding.

(C) All requests for subpoenas and subpoenas duces tecum shall be filed with the Director of the Investigative Division or the Director's designee, no later than ten (10) business days prior to the date of the proceeding at which the presence of any such witness or documents would be required.

(D) A party requesting issuance of subpoenas and subpoenas duces tecum shall be responsible for obtaining service and for the cost of that service.

(11) The respondent is responsible for any expenses associated with witnesses, subpoenas and/or evidence presented on her/his behalf.

(12) Any pre-trial motions and/or discovery motions must be filed in the Board office not less than ~~15~~20 days prior to the date set for hearing unless otherwise ordered by the Board.

(13) The respondent shall not communicate with any member of the Board concerning the matters alleged in the complaint before or during or after the hearing. This restriction does not apply to the presentation of testimony or evidence by the respondent in the course of the hearing.

(14) If for any reason a hearing is not completed and the Board finds that the public health, safety or welfare imperatively requires emergency action, the Board may take such emergency action with regard to the respondent's license as it deems necessary in order to protect the health, safety or welfare of the public.

(~~d~~c) **Administrative Penalties.** When determining the amount of the administrative penalty to be imposed for a violation of the Oklahoma Nursing Practice Act the following additional factors shall be a part of the consideration by the Board when establishing the nature, circumstance, and gravity of the violation, the degree of culpability, the effect on the ability of the person to continue to practice and any show of good faith in attempting to achieve compliance with the provisions of the Oklahoma Nursing Practice Act:

(1) evidence of actual or potential harm to patients, clients or the public;

(2) the seriousness of the violation, including the nature, circumstances, extent and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety and welfare of the public;

(3) evidence of misrepresentation(s) of knowledge, education, experience, credentials or skills which would lead a member of the public, an employer, a member of the health-care team, or a patient to rely on the fact(s) misrepresented where such reliance could be unsafe;

(4) evidence of practice history;

(5) evidence of present lack of fitness;

(6) evidence of prior disciplinary history by the Board or any other health care licensing agency in Oklahoma or another jurisdiction;

(7) the length of time the licensee has practiced;

(8) the actual damages, physical or otherwise resulting from the violation;

(9) the deterrent effect of the penalty imposed;

(10) attempts by the licensee to correct or stop the violation;

(11) any mitigating or aggravating circumstances;

(12) the extent to which system dynamics in the practice setting contributed to the problem;

(13) evidence of a lack of truthfulness or trustworthiness;

(14) any other matter that justice may require.

(~~e~~d) **Orders.**

(1) At the conclusion of the hearing, the Board will announce its decision and a written order reviewed and signed by the Board President or other official who presided at the hearing will be issued within twenty (20) days of the Board's decision.

(2) A copy of the order shall be delivered or mailed to the Respondent and the Respondent's attorney of record.

(~~f~~e) **Record of hearing.**

(1) The record in an individual proceeding shall be as defined in the Oklahoma Administrative Procedures Act and shall also include the licensing history of the respondent.

(2) All hearings shall be transcribed by a duly certified reporter, unless the presiding officer designates otherwise. A transcript of the proceedings shall not be made except in the event of an appeal of the decision of the Board, or upon written application accompanied by a deposit sufficient to cover the cost of transcription. Tapes and shorthand or stenotype notes of the proceedings shall be retained for a period of not less than five (5) years.

(~~g~~f) **Appeals and reconsideration.** Requests for reconsideration and appeals of order in individual proceeding shall be in accordance with the Oklahoma Administrative Procedures Act.

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

485:10-15-4. Application

(a) An applicant for licensure as an Advanced Practice Registered Nurse must:

(1) hold a current license to practice as a Registered Nurse in Oklahoma;

(2) submit an official transcript verifying completion of an advanced practice registered nursing education program in one of the four advanced practice registered nurse roles (CNP, CNM, CNS, and CRNA) and a specialty area recognized by the Board. Effective January 1, 2016, the applicant shall have completed an accredited graduate level advanced practice registered nursing education program in at least one of the following population foci: family/individual across the lifespan, adult-gerontology (acute and/or primary), neonatal, pediatrics (acute and/or primary), women's health/gender related, or psychiatric/mental health;

(3) submit evidence of current national certification consistent with educational preparation and by a national certifying body recognized by the Board; and

(4) submit a completed application for licensure containing such information as the Board may prescribe and the required fee. If the application is not completed within one (1) year, a new application and new fee will be required.

(b) **Changing and adding certifications.**

(1) An Advanced Practice Registered Nurse who wishes to add an area of specialty and national certification must meet initial requirements for advanced practice licensure, as identified in 485:10-15-4(a).

(2) An Advanced Practice Registered Nurse who changes ~~their~~ national certification and certifying body within the same specialty area must notify the Board in writing within thirty (30) days of the change and submit a copy of a current national certification recognized by the Board within the same specialty area.

(3) An Advanced Practice Registered Nurse holding more than one certification who does not renew or maintain one of ~~their~~the national certifications must notify the Board in writing within thirty (30) days of the change. The license for which the national certification has expired will be placed on inactive status. The Advanced Practice Registered Nurse shall not work in the specialty area upon expiration of ~~their~~ national certification.

(c) **Endorsement.**

(1) An applicant who is licensed or recognized as an APRN in another U.S. state or territory may be issued an APRN license by endorsement if current Board requirements for licensure as an APRN are met. The applicant must have met all requirements of the advanced practice certifying body to maintain full certification, including requirements for maintaining continuing competence. An applicant for APRN licensure by endorsement who holds certification on provisional or conditional status may be considered for licensure by the Board.

(2) In addition to meeting other requirements for endorsement established by the Board in these rules, the applicant for endorsement of the APRN license must demonstrate continued qualifications for practice through completion of one or more of the following requirements within the last two (2) years prior to receipt of a completed application in the Board office:

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

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

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

(d) **Temporary license for endorsement applicants.** Temporary licensure may be granted under the following conditions:

(1) Current unrestricted licensure as an RN in Oklahoma;

(2) Current unrestricted APRN licensure or recognition in another state or territory in the same role with no history of arrest or disciplinary action requiring further review;

(3) Demonstrates evidence of meeting continuing qualifications for practice through meeting the requirements of 485:10-15-4(c)(2);

(4) Evidence of completing an advanced practice registered nursing education program in one of the four roles and a specialty area recognized by the Board;

(5) Evidence of current national certification consistent with educational preparation and by a national certifying body recognized by the Board;

(6) Completed application for endorsement and temporary recognition and the required fees; and

(7) Submission of fingerprints with the fee established by the Oklahoma State Bureau of Investigation and/or vendor for the purpose of permitting a state and national criminal history records search to be completed.

(8) The temporary license may not be issued for a period longer than ninety (90) days.

(9) The temporary license may be extended, but such period shall be no longer than one (1) year for any applicant.

(e) **Certification program.** The Board shall identify and keep on file the current list of recognized APRN certifications and certifying bodies approved by the Board. A Board-recognized APRN holding recognition prior to July 1, 2012, may continue to be licensed as an APRN with his or her current certification, even if such certification is no longer included on the list of recognized APRN certifications and certifying bodies approved by the Board, PROVIDED the APRN license remains in an active status and current certification is maintained. A licensee may request that a certification program be considered by the Board for inclusion on the list. Effective July 1, 2012, the certification program shall provide documentation of compliance with the following standards:

(1) The certification program is national in the scope of its credentialing;

(2) Conditions for taking the certification examination are consistent with standards of the testing community;

(3) Educational requirements are consistent with the requirements of the advanced practice role and specialty;

(4) The standard's methodologies used are acceptable to the testing community such as incumbent job analysis studies and logical job analysis studies;

(5) Certification programs are accredited by a national accreditation body as acceptable by the Board;

(6) The examination represents entry-level practice in the APRN role and specialty;

(7) The examination represents the knowledge, skills and abilities essential for the delivery of safe and effective advanced nursing care to patients;

(8) Examination items shall be reviewed for content validity and correct scoring using an established mechanism, both before use and at least every five years. When possible, items will be reviewed for cultural bias;

(9) The passing standard is established using acceptable psychometric methods and is re-evaluated at least every five years;

(10) Certification is issued based upon meeting all certification requirements and passing the examination;

(11) A re-take policy is in place;

(12) Certification maintenance program, which includes review of qualifications and continued competence, is in place;

(13) Mechanisms are in place for communication to boards of nursing for timely verification of an individual's certification status, changes in the certification status, and changes in the certification program, including qualifications, test plan and scope of practice; and

(14) An evaluation process is in place to provide quality assurance in the certification program.

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

(a) **Renewal.**

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

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

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

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

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

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

(2) The applicant may request reinstatement of advanced practice licensure by submitting a completed application and the required fee. If the application is not completed within one (1) year, a new application and new fee will be required. If the reinstatement is not approved within two (2) years of the expiration date of licensure, the applicant must meet current requirements for initial advanced practice licensure.

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

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

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

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

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

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

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

(1) An Advanced Practice Registered Nurse may submit a written request to place advanced practice licensure on inactive status.

(2) The date of inactive status will be the date of approval by the Board.

(3) The Board may delegate approval to place advanced practice licensure on inactive status to Board staff.

(4) The applicant may request return-to-active status of advanced practice licensure by submitting a completed application containing such information as the Board may prescribe and the required fee. If the application is not completed within one (1) year, a new application and new fee will be required. If the advanced practice license has been on inactive status for two or more years, the applicant must meet current requirements for initial advanced practice licensure.

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

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

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

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

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

485:10-15-6. Practice as a Certified Nurse Practitioner

(a) **Educational preparation.** Successful completion of an education program shall establish eligibility to take the recognized nurse practitioner certification examination in a specialty area. The education program shall:

(1) Prepare nurse practitioners in a graduate-level nursing program accredited by or holding preliminary approval or candidacy status with the Accreditation Commission for Education in Nursing,~~or~~ the Commission on Collegiate Nursing Education, or the Commission for Nursing Education Accreditation; or

(2) Meet the following requirements:

(A) be based on measurable objectives that relate directly to the scope of practice for the specialty area;

(B) include theoretical and clinical content directed to the objectives;

(C) be equivalent to at least one academic year. A preceptorship which is part of the formal program shall be included as part of the academic year;

(D) be university-based or university-affiliated with oversight by a nursing program accredited by an approved national nursing accrediting agency.

(3) Effective January 1, 2016, all applicants for initial licensure or licensure by endorsement as a Certified Nurse Practitioner must hold a graduate level degree from an advanced practice education program accredited by or holding preliminary approval or candidacy status with the Accreditation Commission for Education in Nursing,~~or~~ the Commission on Collegiate Nursing Education, or the Commission for Nursing Education Accreditation.

(b) **Scope of practice for CNP.** The Certified Nurse Practitioner's scope of practice includes the full scope of nursing practice and practice in an expanded role as follows:

(1) The Certified Nurse Practitioner (CNP) provides comprehensive health care to clients across the life span.

(2) The CNP is responsible and accountable for the continuous and comprehensive management of a broad range of health services, which include, but are not limited to:

(A) promotion and maintenance of health;

(B) prevention of illness and disability;

(C) diagnosis and prescription of medications, treatments, and devices for acute and chronic conditions and diseases;

(D) management of health care during acute and chronic phases of illness;

(E) guidance and counseling services;

(F) consultation and/or collaboration with other health care providers and community resources;

(G) referral to other health care providers and community resources.

(3) The CNP will provide services based upon education, experience, and national certification. It is the responsibility of the licensee to document competency of any act, based upon education, experience and certification.

(4) The scope of practice as previously defined is incorporated into the following specialty categories and further delineates the population served:

(A) Adult CNP (acute and/or primary) provides acute and/or primary health care to adolescents and adults.

(B) Family CNP provides health care to persons across the lifespan.

(C) Geriatric CNP provides health care to older adults.

(D) Neonatal CNP provides health care to neonates and infants.

(E) Pediatric CNP (acute and/or primary) provides acute and/or primary health care to persons from newborn to young adulthood.

(F) Women's Health Care CNP provides health care to adolescent and adult females. Care may also be provided to males with reproductive health needs or problems.

(G) Acute Care CNP provides health care to adults who are acutely or critically ill.

(H) The Adult Psychiatric and Mental Health CNP provides acute and chronic psychiatric and mental health care to persons age 13 or older.

(I) The Family Psychiatric and Mental Health CNP provides acute and chronic psychiatric and mental health care to persons across the lifespan.

(J) The Acute Care Pediatric CNP provides health care to persons from newborn to young adulthood with complex acute, critical and chronic health conditions.

(5) Effective January 1, 2016, the applicant for initial APRN licensure or APRN licensure by endorsement as a CNP shall hold certification in at least one of the following population foci: family/individual across the lifespan, adult-gerontology (acute and/or primary), neonatal, pediatrics (acute and/or primary), women's health/gender related, or psychiatric/mental health.

485:10-15-7. Practice as a Clinical Nurse Specialist

Educational preparation. Successful completion of an education program shall establish eligibility to take the recognized Clinical Nurse Specialist certification examination in a specialty area. The education program shall prepare Clinical Nurse Specialists in a graduate-level advanced practice education program accredited by or holding preliminary approval or candidacy status with the Accreditation Commission for Education in Nursing~~,or~~ the Commission on Collegiate Nursing Education, or the Commission for Nursing Education Accreditation.

485:10-15-9.1. Approval of advanced practice education programs (Effective January 1, 2016) [REVOKED]

~~(a) **Requirements for approval.**~~

~~(1) The Board shall have the authority for approval of advanced practice education programs located in the State of Oklahoma.~~

~~(2) To be approved as an advanced practice education program in the State of Oklahoma, the program shall meet the following standards:~~

~~(A) A graduate level program offered by a university accredited by an accrediting body that is recognized by the U.S. Secretary of Education and/or the Council for Higher Education Accreditation (CHEA);~~

~~(B) The APRN program holds accreditation or candidacy status from the Accreditation Commission for Education in Nursing, the Commission on Collegiate Nursing Education, the Accreditation Commission for Midwifery Education, or the American Association of Nurse Anesthetists' Council on Accreditation of Nurse Anesthesia Educational Programs;~~

~~(C) The curriculum of the APRN nursing education program must prepare the graduate to practice in one of the four identified APRN roles (i.e., CRNA, CNM, CNS, or CNP) and in at least one of the six population foci (i.e., Family/Individual across the Lifespan, Adult-Gerontology (acute and/or primary), Neonatal, Pediatrics (acute and/or primary), Women's Health/Gender Related, or Psychiatric/Mental Health).~~

~~(b) **Establishment of a new advanced practice education program in the State of Oklahoma.**~~

~~(1) An institution wishing to establish a new advanced practice education program shall submit an application for approval to the Board at least six weeks prior to a regularly scheduled Board meeting and at least six months prior to planned admission of the first students, which provides the following information for the Board's consideration:~~

~~(A) mission and organization of the education institution;~~

~~(B) accreditation or candidacy status of the education institution and of the proposed program;~~

~~(C) advanced practice registered nurse role(s) and population focus/foci of the proposed program;~~

~~(D) degree to be offered;~~

~~(E) degree plan;~~

~~(F) tentative time table for program development and implementation;~~

~~(G) proposed size of program.~~

~~(2) The application shall be signed by the controlling institution's administrative official with evidence that the institution is authorized to offer education programs in Oklahoma.~~

~~(3) The Board shall advise the institution in writing of its decision to:~~

~~(A) approve the program; or~~

~~(B) defer approval pending receipt of further information; or~~

~~(C) deny approval specifying reasons for denial.~~

~~(c) **Reports to the Board.**~~

~~(1) A Board approved advanced practice education program shall submit notification to the Board of changes in accreditation status, nurse administrator for the program, or institutional ownership within 30 days of the change.~~

~~(2) Upon notification of loss of accreditation status, the program will be removed from the list of Board approved advanced practice education programs. The program will be notified that those graduating since loss of accreditation are not eligible for licensure as Advanced Practice Registered Nurses in the State of Oklahoma.~~

~~(3) Additions to or changes in the advanced practice education program that change the advanced practice role, population focus, or degree require approval of the Board prior to implementation.~~

SUBCHAPTER 16. REQUIREMENTS FOR PRESCRIPTIVE AUTHORITY FOR ADVANCED PRACTICE REGISTERED NURSES

485:10-16-3. Initial application

The Advanced Practice Registered Nurse applicant for prescriptive authority shall:

(1) hold current Registered Nurse and Certified Nurse Practitioner, Certified Nurse Midwife, or Clinical Nurse Specialist licenses in Oklahoma;

(2) submit a completed application for each type of recognition and advanced practice specialty certification held containing such information as the Board may prescribe and the required fee. If the application is not completed within one (1) year, a new application and new fee will be required;

(3) submit a written statement from an Oklahoma-licensed physician supervising prescriptive authority which identifies a mechanism for:

(A) appropriate referral, consultation, and collaboration between the Advanced Practice Registered Nurse and physician supervising prescriptive authority;

(B) availability of communication between the Advanced Practice Registered Nurse and physician supervising prescriptive authority through direct contact, telecommunications, or other appropriate electronic means for consultation, assistance with medical emergencies or patient referral;

(4) submit documentation verifying completion of forty-five contact hours of Category B continuing education or three academic credit hours of education, as required by law and defined in the rules and regulations, in a course or courses in pharmacotherapeutic management that target/s Advanced Practice Registered Nurses or individuals enrolled in an advanced practice registered nursing education program and/or other authorized prescribers. Such contact hours or academic credits shall be obtained within a time period of three (3) years immediately preceding the date of receipt of application for prescriptive authority. The three (3) year time period may be waived if the applicant has graduated from their advanced practice registered nursing education program within a time period of three years immediately preceding the date of application for prescriptive authority and evidence that didactic and clinical preparation for prescribing was incorporated throughout the program;

(5) Submit documentation verifying successful completion of a graduate level advanced practice registered nursing education program that included an academic course in pharmacotherapeutic management and didactic and clinical preparation for prescribing incorporated throughout the program. Until January 1, 2016, a Clinical Nurse Specialist who verifies completion of a graduate level advanced practice registered nursing education program that included an academic course in pharmacotherapeutic management may meet the requirements in 485:10-16-4 in lieu of submitting verification of didactic and clinical preparation for prescribing incorporated throughout the advanced practice nursing education program.

485:10-16-3.1. Endorsement

In addition to meeting statutory requirements for endorsement of prescriptive authority, an applicant for prescriptive authority recognition by endorsement must:

(1) Be licensed as an APRN in Oklahoma;

(2) Submit a completed application containing such information as the Board may prescribe and required fee. If the application is not completed within one (1) year, a new application and new fee will be required;

(3) Present evidence of licensure or recognition as an APRN in the same role with prescriptive authority in another state;

(4) Submit a written statement signed by the Oklahoma-licensed physician supervising prescriptive authority that includes a method of assuring availability of the supervising physician through direct contact, telecommunications or other appropriate electronic means for consultation, assistance with medical emergencies, or patient referral; and

(5) Present evidence that during the two (2) years preceding receipt of the completed application for endorsement in the Board office of either (A) or (B) below:

(A) Employment in a position that requires APRN prescriptive authority licensure or recognition with verification of at least 520 work hours; or

(B) Documentation approved by the Board, verifying a minimum of fifteen (15) contact hours or one academic credit hour of education or the equivalent in pharmacotherapeutics and clinical application of use of pharmacological agents in the prevention of illness and in the restoration and maintenance of health, in a program approved by the Board that is more advanced than basic registered nurse preparation and that is applicable to the scope of practice and specialty certification.

(i) If the applicant selects option (B) above, the following categories identify how the education requirement may be met. No more than the identified percentage for each category may apply towards the contact hour/academic hour or the equivalent requirements for endorsement of prescriptive authority;

(ii) Maximum number of units acceptable in continuing education categories:

(I) Category A: up to 100% of requirement (1 credit hour)

(II) Category B: up to 100% of requirement (15 contact hours)

(III) Category C: up to 100% of requirement (15 contact hours)

(IV) Category D: up to 20% of requirement (3 contact hours)

(V) Category E: up to 20% of requirement (3 contact hours)

485:10-16-6. Renewal

The application for renewal of prescriptive authority shall:

(1) be concurrent with the two-year RN licensure renewal and renewal of advanced practice registered nurse~~recognition~~licensure;

(2) include:

(A) a completed application containing such information as the Board may prescribe and required fee;

(B) documentation approved by the Board verifying a minimum of fifteen (15) contact hours, or one academic credit hour of education, or the equivalent, in pharmacotherapeutics, clinical application and use of pharmacological agents in the prevention of illness, and in the restoration and maintenance of health, in a program beyond basic registered nurse preparation, approved by the Board, within the two-year period immediately preceding the effective date of application for renewal of prescriptive authority, which is applicable to the scope of practice and specialty certification. This documentation requirement does not apply to individuals renewing within twenty-four (24) months of initial prescriptive authority approval.

(i) The following categories identify how this requirement may be met. No more than the identified percentage for each category may apply towards the contact hour/academic hour or the equivalent requirements for renewal of prescriptive authority;

(ii) Maximum number of units acceptable in continuing education categories:

(I) Category A: up to 100% of requirement (1 credit hour)

(II) Category B: up to 100% of requirement (15 contact hours)

(III) Category C: up to 100% of requirement (15 contact hours)

(IV) Category D: up to 20% of requirement (3 contact hours)

(V) Category E: up to 20% of requirement (3 contact hours)

(C) A written statement signed by the physician supervising prescriptive authority that includes a method of assuring availability of the supervising physician through direct contact, telecommunications or other appropriate electronic means for consultation, assistance with medical emergencies, or patient referral. Applicants for renewal who have submitted a written statement signed by the physician supervising prescriptive authority prior to renewal but within ninety (90) days of the expiration date are not required to submit another written statement for renewal.

485:10-16-7. Reinstatement/Inactive Status

(a) **Reinstatement.**

(1) If an Advanced Practice Registered Nurse fails to renew prescriptive authority prior to the expiration date of that authority, the Advanced Practice Registered Nurse's prescriptive authority shall expire and the Advanced Practice Registered Nurse shall cease prescribing.

(2) The Advanced Practice Registered Nurse may reinstate the prescriptive authority ~~renewal~~recognition by submitting:

(A) a completed application containing such information as the Board may prescribe and required fee. If the application is not completed within one (1) year, a new application and new fee will be required;

(B) ~~evidence of having met requirements for renewal of prescriptive authority as listed in 485:10-16-6(2)(B)(i)(ii).~~

~~(C)~~ A written statement signed by the Oklahoma-licensed physician supervising prescriptive authority that includes a method of assuring availability of the supervising physician through direct contact, telecommunications or other appropriate electronic means for consultation, assistance with medical emergencies, or patient referral~~.~~; and

(C) present evidence of:

(i) having met requirements for renewal of prescriptive authority as listed in 485:10-16-6(2)(B); or

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

(3) If reinstatement is not approved within three years of the expiration of prescriptive authority, the applicant will be required to meet initial application criteria.

(b) **Inactive Status.**

(1) An Advanced Practice Registered Nurse may submit a written request to place prescriptive authority on inactive status.

(2) The date of inactive status will be the date of approval by the Board. The Board may delegate approval of the licensee's request to be placed on inactive status to Board staff.

(3) The Advanced Practice Registered Nurse may return to active status the prescriptive authority ~~renewal~~recognition by submitting:

(A) a completed application containing such information as the Board may prescribe and required fee. If the application is not completed within one (1) year, a new application and new fee will be required;

(B) ~~evidence of having met requirements for renewal of prescriptive authority as listed in 485:10-16-6(2)(B)(i)(ii).~~

~~(C)~~ A written statement signed by the Oklahoma-licensed physician supervising prescriptive

authority that includes a method of assuring availability of the supervising physician through direct contact, telecommunications or other appropriate electronic means for consultation, assistance with medical emergencies, or patient referral~~.~~; and

(C) present evidence of:

(i) having met requirements for renewal of prescriptive authority as listed in 485:10-16-6(2)(B); or

(ii) licensure or recognition as an APRN in the same role with prescriptive authority in another state with employment in a position that requires APRN prescriptive authority licensure or recognition with verification of at least 520 work hours during the past two (2) years preceding receipt of the application for return to active status in the Board office.

(4) If return to active status of prescriptive authority is not approved within three (3) years of the date of approval of inactive status, the applicant will be required to meet initial application criteria.

SUBCHAPTER 18. PRESCRIPTIVE AUTHORITY FOR CRNA

485:10-18-2. Initial application

The Certified Registered Nurse Anesthetist (CRNA) who applies for authority to order, select, obtain and administer drugs shall:

(1) hold a current R.N. license and licensure as a CRNA in Oklahoma;

(2) submit the following:

(A) a completed application containing such information as the Board may prescribe for authority to order, select, obtain and administer drugs and the required fee. If the application is not completed within one (1) year, a new application and new fee will be required;

(B) evidence of satisfactory completion of a minimum of fifteen (15) units of continuing education in advanced pharmacology related to the administration of anesthesia as recognized by the American Association of Nurse Anesthetists or within an approved nurse anesthetist education program within the two-year period immediately preceding the date of application;

(C) official transcript of CRNA education, if not on file with Board office; and

(D) verification of current national certification.

485:10-18-4. Reinstatement

(a) If a CRNA fails to renew authority to order, select, obtain and administer drugs prior to the expiration date of that authority, the CRNA's authority to order, select, obtain and administer drugs shall expire. If reinstatement is not approved within two years of the expiration of authority to order, select, obtain and administer, the applicant will be required to meet initial application criteria.

(b) The CRNA may reinstate the authority to order, select, obtain and administer drugs by submitting

(1) a completed application containing such information as the Board may prescribe and required fee. If the application is not completed within one (1) year, a new application and new fee will be required;

(2) documentation verifying satisfactory completion of a minimum of eight (8) units of continuing education in advanced pharmacology relating to the administration of anesthesia, as recognized by the American Association of Nurse Anesthetists, completed during the two (2) years immediately preceding renewal.

485:10-18-5. Information which must be included in the order

(a) The CRNA with authority to order, select, obtain and administer drugs shall document all orders in the patient record.

(b) All orders shall:

(1) comply with all applicable state and federal laws;

(2) include:

(A) name of the client,

(B) date of the order,

(C) full name of the drug, dosage, route and specific directions for administration,

(D) signature of the CRNA

(c) The CRNA with authority to order, select, obtain and administer Schedule II-V drugs shall comply with ~~the Uniform Controlled Dangerous Substance Act requirements. The CRNA with authority to order, select, obtain and administer drugs will notify the Board of Nursing in writing that the DEA registration was received within fourteen (14) days of receipt~~Federal Drug Enforcement Administration (DEA) requirements and state of Oklahoma requirements prior to prescribing controlled substances.

[OAR Docket #15-436; filed 6-11-15]

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

[OAR Docket #15-571]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions
535:1-1-1. Purpose [AMENDED]
Subchapter 3. Description of Organization
535:1-3-1. Creation of Board [AMENDED]
535:1-3-2. Board members [AMENDED]
535:1-3-3. Powers and duties of Board [AMENDED]
Subchapter 5. Board Administrative ~~General Course in Method of~~ Operations
535:1-5-1. Board office [AMENDED]
535:1-5-3. Communication in writing [AMENDED]
535:1-5-4. Board meetings [AMENDED]

535:1-5-5. Appearance before the Board ~~Complaints~~ [AMENDED]
535:1-5-5.1. Complaint confidentiality [AMENDED]
535:1-5-6. Availability of records [AMENDED]
Subchapter 7. Individual Proceedings
535:1-7-1. Complaints [AMENDED]
535:1-7-2. Serving of notices [AMENDED]
535:1-7-3. Hearings [AMENDED]
535:1-7-3.1. Standard of proof [AMENDED]
535:1-7-4. Failure to appear or failure to comply [AMENDED]
535:1-7-5. Subpoenas [AMENDED]
535:1-7-6. Hearing records and record maintenance [AMENDED]
Subchapter 8. Requests for Rule Changes [NEW]
535:1-8-1. Requests for rule changes [NEW]
Subchapter 9. Rulemaking Hearings
535:1-9-1. Reasonable opportunity for public input on proposed rulemaking [AMENDED]
535:1-9-2. Administrative Procedures Act (APA) rulemaking requirements [AMENDED]
Subchapter 11. Fees
535:1-11-1. Annual licenses, permits and renewals [AMENDED]
535:1-11-2. Pharmacist initial registration and other fees [AMENDED]
535:1-11-4. Other fees [AMENDED]
535:1-11-5. Miscellaneous [AMENDED]
Subchapter 13. Requests for rule changes [REVOKED]
535:1-13-1. Requests for rule changes [REVOKED]
Subchapter 15. Declaratory Rulings
535:1-15-1. Definitions [AMENDED]
535:1-15-2. Declaratory rulings [AMENDED]

AUTHORITY:
Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.3, 353.5 - 353.7, 353.9, 353.11, 353.18; 353.20, 353.22, 353.24 - 353.26, 353.29, 353.30; and Title 75 O.S., Section 302, 305, 307, and 309; and Title 63 O.S., Sec 2-201, 2-208 and 2-210; and Title 51 Sec. 24 A.5 (3)

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ANALYSIS:
The revisions in 535:1-1-1 removes archaic language, standardizes 'Board' references and corrects grammar. The revisions in 535:1-3-1, 535:1-3-2, 535:1-3-3, 535:1-5-1, 535:1-5-3, 535:1-5-4, and 535:1-5-6(a) cleans up law cites and standardizes "Board of Pharmacy to "Board". The revisions in 535:1-5-1 also corrects the Board address to 2920 N Lincoln Suite A, Oklahoma City, OK 73105-4212. The revisions in 535:1-5-3, 535:1-7-2 corrects "Executive Director of the Board" to "Director". The revisions in 535:1-5-4(d) correct grammar. The revisions in 535:1-5-5 correct title and describes the process for appearances before the Board.

The revision in 535:1-5-5.1 cleans up language in (b), the revision in 535:1-5-6 clarifies official records, in 535:1-7-1 clarifies sworn complaint and notice of hearing; the revisions in 535:1-7-2(b) clarifies service of notice; and in 535:1-7-3 clarifies notice time and continuance, imminent danger suspension, and the hearing procedure. The revisions in 535:1-7-3.1 clarify standard of proof. The revisions in 535:1-7-4, in 535:1-7-5 and 535:1-7-6 clarify these rules.

The new rule in 535:1-8-1 was moved from 535:1-13-1 as this rule better fits between subchapter 7 and 9. The revisions in 535:1-9-1 and 535:1-9-2 clarify the rules and cleanup law cites.

The revisions in 535:1-11-1 clean up the titles in (5), (7), (8), (9), (10), (11), added are the fees for two new category fees for entities created under federal law called "Outsourcing facility" (12) and "Third-party logistics provider" (13). These new fees are authorized under Title 59 OS 353.18. Federal requirements on the state for these entities require separate rules. The old 535:1-11-1 (12) and (13) are moved to (14) and (15) respectively.

The revisions in 535:1-11-2 (b) (1) and (2) move 535-1-11-5 (2) and (5) up to this fee section for pharmacist for clarity. The revisions in 535-1-11-4 do not change fees, they just update from tape to recording in (b) (6) and cleanup language regarding website information in (c).

The revision in 535-1-11-5 deletes (2) and (5) which are moved for clarity to 535:1-11-2 (b) (1) and (2) and renumbers the contents of the section. Rules in 535:1-13 are revoked and the text is moved to 535-1-8 as these rules better fit between subchapter 7 and 9. The revisions in 535:1-15-1 and 535:1-15-2 improve the clarity of the declaratory ruling rules.

CONTACT PERSON:
Dr. John A. Foust, Executive Director, Oklahoma State Board of Pharmacy, 2920 N Lincoln Boulevard Suite A, Oklahoma City, OK 73105-4212, Phone number 405 521-3815

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 1. GENERAL PROVISIONS

535:1-1-1. Purpose

(a) The rules of this Chapter describe the organization and~~, the general course in method of operations,~~the administrative operation of the Board, the procedures and practices at individual proceedings, the practices at rulemaking hearings, the procedures for requests for rule changes and the procedures for the filing and prompt disposition of petitions for declaratory rulings as to the applicability of any rule or order of the Board ~~of Pharmacy~~ as required under the Administrative Procedures Act.

(b) The fee schedule of this Chapter provides the public and registrants~~registrant~~ access to records, information and fees as required or suggested by the Open Records Act.

SUBCHAPTER 3. DESCRIPTION OF ORGANIZATION

535:1-3-1. Creation of Board

(a) The State Board of Pharmacy is created by virtue of Article 5, Section 39 of the Constitution of Oklahoma. Statutes relating thereto are found in the Oklahoma Pharmacy Act, ~~Title~~ 59~~,~~Section ~~Sections~~ 353 et seq. of the Oklahoma Statutes.

(b) Unless otherwise stated, as used herein, Board means Board of Pharmacy.

535:1-3-2. Board members

The Board ~~of Pharmacy~~ shall consist of six (6) members who are qualified and appointed in accordance with the provisions of 59 O.S.~~,~~ Section 353.3.

535:1-3-3. Powers and duties of Board

The powers and duties of the ~~State~~ Board ~~of Pharmacy~~ are set forth in the Oklahoma Pharmacy Act (the "Act")~~Statutes of Oklahoma~~, 59 O.S.~~,~~Section ~~Sections~~ 353 et seq.

SUBCHAPTER 5. BOARD ADMINISTRATIVE~~GENERAL COURSE IN METHOD OF~~ OPERATIONS

535:1-5-1. Board office

The office of the ~~Oklahoma State~~ Board ~~of Pharmacy~~ is in the Bryan H. Potter Oklahoma State Board of Pharmacy Building, 2920 North Lincoln Boulevard, Oklahoma City, Oklahoma.

535:1-5-3. Communication in writing

Every communication in writing to the Board shall be addressed to the ~~Executive~~ Director ~~of the Board~~ at the Board's principal office, unless the Board directs otherwise.

535:1-5-4. Board meetings

(a) The Board shall hold at least one regular meeting in each calendar year, and at least one meeting for examinations each calendar year.

(b) The Board shall hold other meetings as it deems necessary at the Office of the Board in Oklahoma City, Oklahoma, or such other location as the Board desires.

(c) Special meetings may be called by the President and Director ~~of the Board~~, or a majority of the Board.

(d) Four (4) members of the Board constitute a quorum and may transact any business or hold any hearing by simple majority vote of ~~a~~the quorum.

(e) The Board president shall vote only in the case of tie.

535:1-5-5. Appearance before the Board ~~Complaints~~

All persons desiring to appear before the Board ~~for the purpose of registering a complaint of any nature and/or~~ for any purpose must first furnish the Board with a copy of ~~said~~ information ~~complaint~~, and/or explanation of the purpose in writing~~, either in longhand or typewritten,~~ ten (10) days prior to the next regularly scheduled Board meeting in order that they ~~it~~ may be placed on the agenda and a time allocated for discussion.

535:1-5-5.1. Complaint confidentiality

(a) In order to encourage the public and affected individuals to come forward with complaints regarding registrants and fully share the particulars, the Board will hold all informant or complainant names, addresses or other personal information as confidential and shall not release this information.

(b) The Board shall use all complainant and ~~or~~ informant information provided in conducting its investigations;~~. The Board~~ and may use this information in cases filed against registrants.

(c) Information obtained during an investigation into violations of the Oklahoma Pharmacy Act is not a record as that term is defined in the Oklahoma Open Records Act nor shall such information be subject to subpoena or discovery in any civil or criminal proceeding.

(d) The respondent may acquire information obtained during an investigation, unless the
disclosure of such information is otherwise prohibited, except for the investigation report, if the respondent signs a protective order whereby the respondent agrees to use the information solely for the purposes of defense in the Board proceeding and in any appeal there from and agrees not to otherwise disclose the information.

535:1-5-6. Availability of records

(a) **Document location.** All rules and other written statements of policy or interpretations formulated, adopted or used by the Board ~~of Pharmacy~~ in the discharge of its functions and all final orders, decisions and opinions will be made available for public inspection at the principal office during regular office hours.

(b) **Official records.** Copies of official records of the Board ~~of Pharmacy~~ may be made~~,~~and certified ~~to~~ by the Director or his designee according to ~~with~~ the fee schedule enacted by the Board. Any ~~material in the~~ Board records or material in the Board's offices ~~of Pharmacy~~ protected from disclosure~~publication~~ by state law shall not be released.

SUBCHAPTER 7. INDIVIDUAL PROCEEDINGS

535:1-7-1. Complaints

(a) **Sworn complaint.** In every individual proceeding~~, whether initiated by the Board of Pharmacy or by other complainants, there~~a sworn complaint shall be filed ~~a sworn complaint~~ naming the person against whom relief is sought and containing a brief statement of the factual allegations and alleged violations~~with the Director of the Board containing a brief statement setting forth the allegations and naming the person against whom relief is sought~~.

(b) **Notice of hearing ~~Citation~~.** The Director ~~of the Board~~ shall issue a notice of hearing ~~citation~~ thereby notifying the person named in the complaint of said filing and the date, time and the place for the hearing. The notice should comply with the requirements of 75 O.S. ~~1971 supp.~~Section 309 or its successor.

535:1-7-2. Serving of notices

(a) All notices or other papers requiring service in an individual proceeding shall be served in one of the following manners:

(1) personally by any person appointed to make service by the Director ~~of the Board~~ and in any manner authorized

by the law of this State for the personal service of summonses in proceedings in a state court; or,

(2) by certified mail to the respondent at the last address provided to the Board by respondent or to respondent's attorney.

(b) **Service of notice.** Such service shall constitute proper service ~~be complete~~ upon the personal service or certified mailing of the notice or other paper.

535:1-7-3. Hearings

(a) **Notice time; continuances.** The time set for a hearing, specified in the notice, shall not be less than ten (10) days after the date of the notice. Written motions for any continuances or extensions of time shall state the time desired and the reasons for the request, and shall be filed with the Board at least five (5) business days before the hearing, and may be denied by the Director ~~of the Board~~ if not filed at least (five) 5 business days before the hearing. The ~~Board hereby authorizes the~~ Director ~~of the Board~~is authorized to rule on said motions. ~~Said application shall be served upon the Director of the Board and be acted upon promptly by the Director; if~~If the motion ~~for continuance or extension~~ is denied; the party may renew the request ~~and make a proper showing~~ for continuance at the hearing.

(b) **Imminent Danger Suspension.** If the Director finds that there is imminent danger to the public health or safety, he ~~or she~~ may immediately suspend any registration simultaneously with the scheduling of a Board hearing.

(1) **Method.** The registrant shall be notified of such suspension through an imminent danger letter signed by the Director.

(2) **Notice.** Notice shall be given in the manner described in 535:1-7-2.

(c) **Order of procedure.** Hearings ~~The hearing~~ shall be conducted in an orderly manner by the President of the Board, or his designee. The order of procedure shall~~will~~ follow that which applies in civil proceedings of Law. However, the rules of evidence shall be those specified by the Oklahoma Administrative Procedures Act.

(d) **Admissibility.** The President of the Board, or his designee, shall rule upon the admissibility of evidence and objections thereto, and shall rule upon other motions or objections arising in the course of the hearing.

535:1-7-3.1. Standard of proof

The standard of proof in an individual proceeding ~~or administrative hearing~~ before the Board is that of clear and convincing evidence.

535:1-7-4. Failure to appear or failure to comply

(a) Any respondent who fails to appear as directed may be determined to have waived his right to present a defense to the charges alleged in the complaint. Ifthe Board finds~~it appears~~, after having reviewed the evidence, that the violation alleged did in fact occur~~.~~, and suspension, revocation or other disciplinary action may be ordered by the Board.

(b) Failure to comply with the Board's order(s) may result in additional sanctions by the Board.

535:1-7-5. Subpoenas

(a) **Issuance; serving.** Subpoenas for the attendance of witnesses, and/or for the furnishing of information required by the Board, and/or for the production of evidence or records of any kind shall be issued by the Director ~~of the Board~~ or his designee. Subpoenas shall be served~~,~~ and a return made in any manner prescribed by Oklahoma Administrative Procedures Act (~~APA), et seq.~~

(b) **Order to compel.** Upon the failure of any person to obey a subpoena, upon the refusal of any witness to be sworn, or to make an affirmation or to answer a question put to him in the course of a ~~the~~ hearing, ~~the Director of the Board may institute appropriate~~appropriate judicial proceedings may be instituted under the laws of the State for an order to compel compliance with the subpoena or the giving of testimony~~, as the case may be~~. Any scheduled hearing shall proceed, so far as it is possible, but the Board, in its discretion, at any time, may continue the proceeding ~~proceedings~~ for such time as may be necessary to secure a final ruling in the judicial ~~compliance proceeding~~ proceedings.

535:1-7-6. Hearing records and record maintenance

(a) **Recordings.** ~~A record by means of tape recording or shorthand notes will be made of all hearings conducted by the Board of Pharmacy unless the presiding officer designates otherwise.~~

~~(1) Oral proceedings during~~The Board's ~~Board~~ hearings shall be electronically recorded.

(1~~A~~) The recording ~~record~~ of the hearing and the file containing the pleading will be maintained in the Board Office.

~~(B)~~ Such record shall be maintained for such time as to protect the record through judicial review.

(2) A copy ~~Copies~~ of the recording ~~recordings~~ of the hearing ~~proceedings~~ shall be provided by the Board ~~agency~~ at the request of any party to the hearing ~~proceedings~~.

(b) **Transcription costs.** The costs of transcription of the recording of a hearing ~~recordings~~ shall be borne by the party requesting the transcription. A transcript of the hearing ~~proceedings~~ shall not be made by the Board except upon written application and a deposit sufficient ~~in the amount~~ to pay for having the recording ~~record~~ transcribed.

(c) **Judicial review.** Electronic recordings of an individual proceeding, as certified by the Director ~~agency~~, may be submitted to the reviewing court by the agency as part of the record of the proceedings under review. In such case where the reviewing court requires transcription, the expense of transcription ~~transcriptions~~ shall be paid by the non-prevailing party.

(d) **Court reporter.** Parties to any Board hearing may have the proceedings transcribed by a court reporter at their own expense.

SUBCHAPTER 8. REQUESTS FOR RULE CHANGES

535:1-8-1. Requests for rule changes

(a) All interested persons may request the Board to promulgate, amend or repeal a rule. Requests are to be made in writing and filed with the Director. Each request shall set forth fully the reasons for its submission; the alleged need or necessity therefor; whether or not the proposal conflicts with any existing rule, and what, if any, statutory provisions are involved.

(b) Each request to the Board to promulgate, amend or repeal a rule, shall be considered by the Board.

(c) After consideration of a request to promulgate, amend or repeal a rule the Board may:

(1) approve the proposed change in compliance with the Oklahoma Administrative Procedures Act; or,

(2) determine that the proposal or request is not a necessary rule, amendment or repeal; refuse the same and reflect the decision in the regular minutes of the Board.

SUBCHAPTER 9. RULEMAKING HEARINGS

535:1-9-1. Reasonable opportunity for public input on proposed rulemaking

Prior to the adoption, amendment, or repeal of any rule, the Board shall afford any interested person a reasonable opportunity to submit data, views, or arguments, orally or in writing, to the Board concerning the proposed action on the rule. ~~Should the proposed action on a rule affect one's substantive rights, the opportunity for an oral hearing will be granted if requested in writing by an individual or by an association. If no substantive rights are involved, the opportunity for oral arguments or view is in the discretion of the Board. The Board shall decide whether any substantive rights are involved.~~

535:1-9-2. Administrative Procedures Act (APA) rulemaking requirements

In any rule-making action, the Board shall comply with the then current requirements in the Oklahoma Administrative Procedures Act. ~~(75 O.S. Sec. 301 et seq.)~~

SUBCHAPTER 11. FEES

535:1-11-1. Annual licenses, permits and renewals

Annual license, permit and renewal fees, as set by the Board, shall be as follows:

(1) Pharmacist renewal (active or inactive) - $100

(2) Senior inactive pharmacist renewal (age 65 or over, retired) - $20

(3) Pharmacy license

(A) Retail, hospital, non-resident, and remote medication order processing - $150

(B) Charitable clinic - $ 75

(C) Hospital drug room - $ 40

(4) Oklahoma licensed pharmacy emergency medication kit placed in an Oklahoma Facility [59 O.S. 367.8 (C)] remote site - $50

(5) Sterile compounding ~~Parenteral~~ permit - $ 75

(6) Drug supplier permit - $ 20

(7) Wholesale distributor license ~~Wholesaler permit~~ - $200

(8) Repackager license ~~Packager permit~~ - $200

(9) Manufacturer license~~permit~~ - $200

(10) Medical gas supplier license~~permit~~ - $100

(11) Medical gas distributor license~~permit~~ - $200

(12) Outsourcing facility license - $200

(13) Third-party logistics provider license - $200

(~~12~~14) Pharmacy technician permit - $40

(~~13~~15) Duplicate renewal receipt, permit, or practical experience certificate:

(A) Duplicate for lost, destroyed or damaged original-$10

(B) Duplicate or multiple location copy - $10

535:1-11-2. Pharmacist initial registration and other fees

(a) Pharmacist initial registration fees, as set by the Board, shall be as follows:

(1) Registration by reciprocity - $200

(2) Registration by examination - $125 + the examination cost

(3) Registration by score transfer - $200

(b) Other fees

(1) Duplicate certificate of registration - $30

(2) Pharmacist Reinstatement: Back fees + CE + 15 hours CE penalty + $100

535:1-11-4. Other fees

(a) For all records required to be open by the Oklahoma Open Records Act, fees shall be charged for copying as specified in the open records act.

(b) Other fees shall be as follows:

(1) Registrant computer address disk or e-mailed file:

(A) Facility (wholesaler, packager, manufacturer) - $50

(B) Pharmacy - $75

(C) Technician - $100

(D) Intern - $100

(E) Pharmacist - $100

(2) Photostat copies, per page - $.25

(3) Facsimile (Fax) fee, per page - $1

(4) Annual subscriptions (7/01 - 6/30 each year)

(A) Notification of rulemaking intent - $18

(B) OSBP/NABP Quarterly Voluntary Compliance Newsletter for other than Oklahoma licensed ~~registered~~ Pharmacists - $25

(C) Board meeting agenda notice - $18

(5) Research time, when available (per hour)

(A) Staff research time - $20

(B) Computer research time - $100

(6) Reproduction of Board meeting recordings, if available;

(A) Audio recording, each ~~tape copy (per tape)~~, $15

(B) Video recording, each ~~tape copy (per tape)~~, $15

(7) Certification of open public record, not certification of grades, $1.00 per page.

(8) Certified letters of good standing or licensure verification, $10

(c) Board ~~Open~~ records, which are available and may be obtained from the Board's ~~our~~ website www.pharmacy.ok.gov at no charge.

535:1-11-5. Miscellaneous

Miscellaneous fees, as set by the Board, shall be as follows:

(1) Oklahoma ~~State~~ Board ~~of Pharmacy~~ lawbook - $10

~~(2) Duplicate certificate of registration - $30~~

(2~~3~~) Certification of grades - $10 - (exempt if ELTP)

(3~~4~~) Special inspection fee (each) Not to exceed - $200

~~(5) Pharmacist Reinstatement: Back fees + CE + 15 hours CE penalty + $100~~

(4~~6~~) Fines - Not~~(not~~ to exceed on each count~~)~~ - $3,000

(5~~7~~) Duplicate for lost/destroyed license, renewal receipt, permit, or practical experience certificate - $10.

(6~~8~~) Late fee for renewal of registration, licenses and/or permits if not received by the Board office within 15 days after expiration date - $ fee x 2

(7~~9~~) Insufficient check charge - $25

(8~~10~~) Reinstatement of permits or licenses other than pharmacists - $ fee x 2

SUBCHAPTER 13. REQUESTS FOR RULE CHANGES [REVOKED]

535:1-13-1. Requests for rule changes [REVOKED]

~~(a) All interested persons may request the Board to promulgate, amend or repeal a rule. Requests are to be made in writing and filed with the Director. Each request shall set forth fully the reasons for its submission; the alleged need or necessity therefor; whether or not the proposal conflicts with any existing rule, and what, if any, statutory provisions are involved.~~

~~(b) Each request to the Board to promulgate, amend or repeal a rule, shall be considered by the Board at its next regular meeting or may be continued for further consideration to a subsequent meeting.~~

~~(c) After consideration of a request to promulgate, amend or repeal a rule the Board may:~~

~~(1) approve the proposed change, to be formally considered for adoption as required by the current Administrative Procedures Act; or,~~

~~(2) determine that the proposal or request is not a necessary rule, amendment or repeal; refuse the same and reflect the decision in the regular minutes of the Board.~~

SUBCHAPTER 15. DECLARATORY RULINGS

535:1-15-1. Definitions

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

"Declaratory ruling" means an interpretation of a Board's rule by the Board.

535:1-15-2. Declaratory rulings

(a) Any person affected by any of the rules or orders of the ~~Oklahoma State~~ Board ~~ofPharmacy~~ may request in writing an interpretation or ruling regarding the application of such rules or orders.

(b) Such request shall state fully the facts to which the rule or order may apply, and the particular rule or order about which the question exists.

(c) The request or inquiry will be added to the agenda for the next scheduled Board meeting but may, if necessary, be continued for further consideration to a subsequent meeting.

(d) The Board's interpretation of the rule or order will be furnished in writing to the person making the request within a reasonable time after Board consideration ~~thereafter~~.

[OAR Docket #15-571; filed 6-15-15]

TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY
CHAPTER 12. UNUSED PRESCRIPTION DRUG PROGRAM FOR OKLAHOMA'S MEDICALLY INDIGENT

[OAR Docket #15-572]

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n/a

ANALYSIS:
The revision in 535:12-1-9 (a) (2) changes practitioner to prescribers, to standardize the reference throughout Board rules.
CONTACT PERSON:
Dr. John A. Foust, Executive Director, Oklahoma State Board of Pharmacy, 2920 N Lincoln Boulevard Suite A, Oklahoma City, OK 73105-4212, Phone number 405 521-3815

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

535:12-1-9. Requirements for Pharmacies dispensing unused prescription drugs

(a) The following are requirements for eligible Oklahoma licensed pharmacies dispensing unused prescription drugs;

(1) Maintain a current drug identification book, or may have a current computer program or online service for the same;

(2) Dispense unused prescription drugs only upon the valid prescription of an Oklahoma licensed health care prescribers ~~practitioner~~;

(3) Properly label all dispensed unused prescription drugs;

(4) Comply with all federal and state law and rules regarding storage and distribution of prescription drugs;

(5) Inspect all prescription drugs prior to dispensing to determine that the donated drugs shall meet all federal and state requirements for product integrity;

(6) Unused prescription drugs, prescription drug manufacturer's drug samples and donated manufacturers drug stock obtained or donated under this Subchapter shall not be resold, except transfers as allowed in 535:12-1-9 (d) between licensed eligible pharmacies.

(b) If it is determined by the pharmacist's professional judgment that it would be best for the patient, the drugs can be removed from bingo cards (unit dose packaging [UDP]) and placed in a proper vial for dispensing. If the bingo card is relabeled and used the pharmacist must ensure that the patient is made aware that the medication is not in a child resistant container.

(1) See expiration dating requirements in labeling 535:12-1-11.

(2) The removal of the medication from the bingo card (UDP) may only be done by the dispensing pharmacy's licensed pharmacist or permitted pharmacy technician.

(3) Samples must remain in original package as required under federal law, and cannot be removed from original packaging for dispensing.

(c) Eligible Oklahoma licensed charitable pharmacies may establish the following policy and procedures for dispensing of unused prescription drugs to the medically indigent.

(1) May limit the number of prescriptions per patient per visit or per month, to allow a greater number of individuals access to such prescription drugs.

(2) When established, this should be a written policy that is enforced equally to prevent discrimination.

(d) Eligible Pharmacies (EP) may transfer unused prescription drugs to another pharmacy in the program when one EP has the need for a drug and another EP has it available.

(1) A manifest will be prepared by the transferring pharmacy and kept on file for two (2) years.

(2) A copy of the manifest will be sent with the transferred drugs and kept on file in the receiving pharmacy for two (2) years.

(e) The Board will request input from the Oklahoma Department of Mental Health and
Substance Abuse Services regarding rules for their eligible pharmacies.

(f) The Board will request input from the Oklahoma Department of Health regarding rules for their eligible pharmacies.

[OAR Docket #15-572; filed 6-15-15]

TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY
CHAPTER 13. EMERGENCY / DISASTER PRESCRIPTION DRUG RULES

[OAR Docket #15-573]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
535:13-1-4. Prescription Drug Emergency / Disaster Response [AMENDED]
AUTHORITY:
Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.7, 353.13, 353.13A, 353.15A, 353.17, 353.18; 353.20, 353.22, 353.24 - 353.26, 353.29, 354; Title 75 O.S., Section 302, 305, 307, and 309; Title 63 O.S., Sec 2-201, 2-208 and 2-210; and Title 51 Sec. 24 A.5 (3).
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
October 24, 2014
COMMENT PERIOD:
November 17, 2014 through January 14, 2015
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APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 8, 2015
FINAL ADOPTION:
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EFFECTIVE:
August 27, 2015
SUPERSEDED EMERGENCY ACTION:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Revisions in 535:13-1-4 change "prescribing practitioner" to "prescriber" and hyphenates the word 'one-time'.
CONTACT PERSON:
Dr. John A. Foust, Executive Director, Oklahoma State Board of Pharmacy, 2920 N Lincoln Boulevard Suite A, Oklahoma City, OK 73105-4212, Phone number 405 521-3815

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED

FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

535:13-1-4. Prescription Drug Emergency / Disaster Response

(a) If a patient from the area affected by the emergency / disaster declaration requests a refill of a non-controlled maintenance medication, the pharmacist, medical gas supplier, or medical gas distributor should make an attempt to contact the original prescriber ~~prescribing practitioner~~ for authorization to dispense refills.

(1) If the prescriber~~prescribing practitioner~~ cannot be contacted; and if in the pharmacist's professional judgment, or in the medical gas supplier's or medical gas distributor's sound judgment, the dispensing of the medication is essential to the patient's health and safety, the pharmacist, or in the case of a medical gas supplier or medical gas distributor may dispense a one-time emergency supply up to a 30-day supply of such medication.

(2) Only prescription medical gases may be dispensed by medical gas suppliers and medical gas distributors under these rules.

(3) The prescription should be marked as an "Emergency" prescription for a person displaced or affected by such disaster.

(b) If a patient from the area affected by the emergency / disaster requests refills of controlled dangerous substance (CDS), the pharmacist should make an attempt to contact the original prescriber ~~prescribing practitioner~~ for authorization to dispense refills.

(c) If the pharmacist is unable to contact the prescriber ~~prescribing practitioner~~ regarding a CDS prescription, then they must check with the federal Drug Enforcement Agency (DEA) and Oklahoma Bureau of Narcotics (OBN) to see if they have approved an emergency dispensing of CDS for patients affected by the emergency / disaster.

(1) If the federal DEA and OBN approve dispensing CDS in an emergency or disaster situation; and, if in the pharmacist's professional judgment the dispensing of the medication is essential to the patient's health and safety, the pharmacist may dispense up to the allowed limit set by DEA and OBN not to exceed a ten (10) day supply of CDS medication.

(A) The patient should provide identification and a prescription vial or some means of determining the person has been prescribed such medication.

(B) The prescription should be marked as an "Emergency" prescription for a person displaced or affected by the disaster.

(2) If emergency CDS dispensing is NOT approved by the federal DEA and OBN the patients will have to be referred to a healthcare professional.

[OAR Docket #15-573; filed 6-15-15]

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

[OAR Docket #15-574]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions
535:15-1-1. Purpose [AMENDED]
Subchapter 3. Pharmacies
535:15-3-1.1. Definitions [AMENDED]
535:15-3-2. Pharmacy responsibilities [AMENDED]
535:15-3-4. Physical requirements for pharmacies [AMENDED]
535:15-3-4.1. Pharmacy licensing requirement [AMENDED]
535:15-3-4.2. Minimum required information for licensure [AMENDED]
535:15-3-6. Required library reference books or computer sources [AMENDED]
535:15-3-7. Condemnation authority for open packages of drugs taken in thefts / burglaries [AMENDED]
535:15-3-8. Closing a drug store; violation notice [AMENDED]
535:15-3-11. Prescription drugs [AMENDED]
535:15-3-12. Transfer of prescription refill information [AMENDED]
535:15-3-12.1. Electronic transfer of prescription refill information [AMENDED]
535:15-3-13. Pharmacist's responsibility in a pharmacy [AMENDED]
535:15-3-14. Patient records [AMENDED]
535:15-3-15.1. Transmission of prescription orders other than verbal orders [AMENDED]
535:15-3-16. Adequate staffing rules for pharmacists and pharmacies [AMENDED]
535:15-3-21. Prescription fill, refill and partial fill records and reports [AMENDED]
Subchapter 4. Remote Medication Order Processing (RMOP) and RMOP Pharmacy for Hospital Pharmacies
535:15-4-1. Purpose [AMENDED]
535:15-4-5. Responsibilities and duties of RMOP pharmacies and pharmacy manager [pharmacist in charge (PIC's)] [AMENDED]
535:15-4-7. Unlawful acts and violations [AMENDED]
Subchapter 5. Hospital Pharmacies
535:15-5-2. Definitions [AMENDED]
535:15-5-7.4. Pharmacy technician tasks [AMENDED]
535:15-5-7.6. Pharmacy technician annual permit requirement [AMENDED]
535:15-5-9. Hospital pharmacy physical requirements [AMENDED]
535:15-5-10. Director of Pharmacy responsibilities [AMENDED]
535:15-5-10.1. Labeling [AMENDED]
535:15-5-10.2. ~~Physician's medication~~Medication orders [AMENDED]
535:15-5-14. Performance improvement [AMENDED]
535-15-5-17. Board ~~of Pharmacy~~ inspections [AMENDED]
535:15-5-19. Remote medication order processing (RMOP) [AMENDED]
Subchapter 6. Hospital Drug Room
535:15-6-1. Purpose [AMENDED]
535:15-6-2. Definitions [AMENDED]
535:15-6-4. Staffing requirements [AMENDED]
535:15-6-5. Drug room and PIC responsibilities and duties [AMENDED]
535:15-6-6. Physical and library requirements [AMENDED]
535:15-6-7. Drug distribution and control [AMENDED]
535:15-6-8. Emergency dispensing and pre-packaged medications [AMENDED]
535:15-6-9 Emergency room pre-packaged medications formulary [AMENDED]
535:15-6-10. Access to drugs in absence of PIC or drug room supervisor [AMENDED]
535:15-6-11. Administration of drugs to patients [AMENDED]
535:15-6-12. Medication from other sources [AMENDED]
535:15-6-14. Drug storage stock inspections [AMENDED]
535:15-6-15. Non-distributive roles of pharmacists [AMENDED]
535:15-6-16. Performance improvement [AMENDED]
535:15-6-17. Board of Pharmacy inspections [AMENDED]
535:15-6-20. Remote medication order processing [AMENDED]

Subchapter 7. Drug Supplier Permits
535:15-7-1. Definitions [AMENDED]
535:15-7-3. Drug supplier restriction [NEW]
Subchapter 9. Sterile Compounded Preparations ~~Parenteral~~ Pharmacy Permits
535:15-9-1. Scope and purpose [AMENDED]
535:15-9-2. Definitions [AMENDED]
535:15-9-3. Sterile compounding preparation ~~Parenteral~~ permit requirements [AMENDED]
535:15-9-4. Permit issuance [AMENDED]
535:15-9-5. Policy and procedure manual [AMENDED]
535:15-9-6. ~~Parenteral~~Sterile compounding preparation pharmacy physical requirements [AMENDED]
535:15-9-7. Manager [AMENDED]
535:15-9-8. Pharmacist accessibility [AMENDED]
535:15-9-9. Drug distribution and control [AMENDED]
535:15-9-10. Cytotoxic or Hazardous drugs [AMENDED]
535:15-9-11. Quality assurance [AMENDED]
535:15-9-12. Pharmacist manager responsibility~~.~~ [AMENDED]
Subchapter 10. Good Compounding Practices
Part 1. Good Compounding Practices for non-sterile products
535:15-10-1. Purpose [AMENDED]
535:15-10-2. Definitions [AMENDED]
535:15-10-3. Pharmacist responsibilities [AMENDED]
535:15-10-4. Drug compounding facilities [AMENDED]
535:15-10-5. Compounding equipment [AMENDED]
535:15-10-8. Drug compounding controls [AMENDED]
535:15-10-8.2. Beyond-use dating [AMENDED]
535:15-10-9. Labeling [AMENDED]
535:15-10-11. Pharmacy generated preparations ~~product~~ requirements [AMENDED]
535:15-10-12. Compounding for a prescriber's office use [AMENDED]
535:15-10-13. Compounding veterinarian preparations ~~products~~ [AMENDED]
535:15-10-14. Compounding of non-sterile hazardous drugs [AMENDED]
535:15-10-16. Violations [NEW]
Part 3. Good Compounding Practices for Sterile Preparations~~Products~~
535:15-10-50. Purpose [AMENDED]
535:15-10-51. Definitions [AMENDED]
535:15-10-52. Pharmacist responsibilities [AMENDED]
535:15-10-53. General requirements [AMENDED]
535:15-10-54. CSP microbial contamination risk levels [AMENDED]
535:15-10-55. Drug compounding facilities [AMENDED]
535:15-10-56. Compounding equipment [AMENDED]
535:15-10-57. Component selection requirements [AMENDED]
535:15-10-59. Drug compounding controls [AMENDED]
535:15-10-61. Beyond use dating (BUD) [AMENDED]
535:15-10-62. Labeling [AMENDED]
535:15-10-63. Records and reports [AMENDED]
535:15-10-64. Compounding for institution and/or practitioner administration [REVOKED]
535:15-10-65. Compounding of sterile hazardous drugs [AMENDED]
535:15-10-66. Compounding of sterile radiopharmaceuticals [AMENDED]
535:15-10-67. Compounding of sterile allergen extracts [AMENDED]
535:15-10-68. Violations [NEW]
Subchapter 11. Charitable Clinic Pharmacies
535:15-11-1. Charitable clinic pharmacy license [AMENDED]
Subchapter 13. Pharmacy Supportive Personnel [AMENDED]
535:15-13-3. Definitions [AMENDED]
535:15-13-5. Supervision of pharmacy technicians [AMENDED]
535:15-13-6. Duties [AMENDED]
535:15-13-7. Prohibited duties [AMENDED]
535:15-13-8. Technician annual permit requirement [AMENDED]
535:15-13-10. Technician address and employment change, and training at change of employment [AMENDED]
535:15-13-11. Multiple locations of employment [AMENDED]
535:15-13-13. Pharmacy technician training [AMENDED]
Subchapter 16. Pharmacy Emergency Medication Kits for use in a Facility
535:15-16-4. Policies and procedures for use of emergency medication kit drugs [AMENDED]
535:15-16-6. Drug categories allowed in emergency medication kits [AMENDED]
535:15-16-7. Violations [AMENDED]
Subchapter 17. Nuclear Pharmacy
535:15-17-5. General requirements [AMENDED]
535:15-17-7. Minimum equipment [AMENDED]
Appendix A. USP <797> Beyond-Use Date Limits Chart [REVOKED]
Appendix B. USP <797> Beyond-Use Date Limits Chart [NEW]

AUTHORITY:
Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.7, 353.13, 353.13A, 353.16A, 353.17, 353.18, 353.20, 353.22, 353.24 - 353.26, 353.29, 354, and 367.8.

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APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 8, 2015

FINAL ADOPTION:
June 8, 2015

EFFECTIVE:
August 27, 2015

SUPERSEDED EMERGENCY ACTION:
n/a

INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
Chapter revisions in 535:15-1-1, 535:15-3-4, 535:15-3-4.1, 535:15-3-4.2, 535:15-3-6, 535:15-3-7, 535:15-3-8, 535:15-3-11, 535:15-3-13, 535:15-3-14, 535:15-3-15-1, 535:15-3-16, 535:15-3-21, 535:15-4-1, 535:15-4-5, 535:15-4-7, 535:15-5-7.4, 535:15-5-7.6, 535:15-5-10, 535:15-5-10.1, 535:15-5-10.2, 535:15-5-14, 535:15-5-17, 535:15-5-19, 535:15-6-1, 535:15-6-4, 535:15-6-5, 535:15-6-6, 535:15-6-8, 535:15-6-10, 535:15-6-11, 535:15-6-12, 535:15-6-14, 535:16-6-15, 535:15-6-16, 535:15-6-17, 535:15-9-2, 535:15-11-1, 535:15-11-1, 535:15-13-5, 535:15-16-4, 535:15-16-5, 535:15-16-6, 535:15-16-7, and 535:15-17-5 correct rule references, correct grammar, spelling, punctuation and improve clarity of the rules, they standardize 'Board' and law cites, and correct practitioner or physician to prescriber.

535:15-1-1 changes parenteral to sterile compounding. 535:15-3-1.1 takes out the pharmacist-in-charge definition since it is moved to statute. 535:15-3-2 describes the pharmacy manager requirements; and clarify that the pharmacy, pharmacy manager and/or the pharmacist are responsible to establish and maintain controls including supervision of automation. They describe drug diversion detection and prevention responsibilities and include changes in inspections.

A staff mistake in the revision in 535:15-3-9 required that rule section be withdrawn. It was corrected, adopted and filed separately.

535:15-3-11 describes requirements to maintain prescription integrity. Comment on this rule, requesting a change. It is in the law, so no change is made.

535:15-3-12 and 535:15-3-12-1 change prescription transfer and electronic prescription transfer rules. 535:15-3-15.1 describes requirements if order is transmitted by prescriber's agent (when allowed); it changes maintained to secured; it cleans up prohibition of restrictive agreements with prescribers that interfere with patient choice language.

535:15-4-5 corrects the confidentiality and the records rule reference. In 535:15-5-2 definitions reference the statutory definition of Certified Medication Order, Hospital, Medication Order, Pharmacy Technician and Supportive Personnel; they correct the definition of pharmacist and medical staff.

535:15-5-7.4, 535:15-5-9, 535:15-5-10, 535:15-5-10.1, 535:15-6-5, 535:15-6-6, 535:15-6-7, 535:15-6-8, 535:15-16-5, 535:15-16-6, 535:15-16-7 and 535:15-17-7 change parenteral products to sterile compounded preparations rules.

535:15-5-7.6 clarifies that pharmacy technicians must be employed in a licensed pharmacy located in Oklahoma. 535:15-5-9 change library requirements. In 535:15-5-10 correct spelling; correct the 'Act' reference;

change practitioner to prescribers; and clean up automated dispensing language. 535:15-5-10.1 change parenteral to sterile compounded, and cleans up the language in sterile compounder admixtures. 535:15-6-2 standardizes Board and law cites and remove ALI practitioner from definitions. 535:15-6-4 clarifies hospital drug room reporting requirements for reporting drug room supervisor and changes rules.

535:15-6-5 corrects the library sources punctuation. 535:15-6-7 and 535:15-6-8 correct the 'Act' cites and remove ALI practitioner. 535:15-6-9 removes and changes the CDS that can be included. 535:15-6-11 changes ALI practitioner to prescriber. 535:15-6-20 removes a duplicated sentence; corrects rule references and grammar.

535:15-7-1 changes practitioners to prescribers and removes two definitions that are in statute. 535:15-7-3 adds restrictions to pharmacies with a drug supplier permit that are required by federal law.

535:15-9-1, 535:15-9-2, 535:15-9-3, 535:15-9-4, 535:15-9-5, 535:15-9-6, 535:15-9-7, 535:15-9-10, 535:15-9-11, 535:15-9-12, 535:15-10-1, 535:15-10-3, change parenteral (in all forms) to sterile compound (in all forms).

535:15-9-2 removes biological safety cabinet, Class 100 environment, Cytotoxic agency, Federal Standard 209E, NSF, and Parenteral definitions and refer to 535:15-10-51; they change cytotoxic to hazardous, they add sterile eye drops and add 'pyrogen free'. 535:15-9-3 and 535:15-9-4 indicate either a retail or non-resident pharmacy license is required to have a sterile compounding permit. 535:15-9-4 removes "beginning July 1, 1990". 535:15-9-5 they correct 'Board' cites. The changes require compounding pharmacies to meet USP Compounding standards / requirements; and change the required reference materials in 535:15-9-6. 535:15-9-8 clarifies that a qualified pharmacist must be accessible. They change cytotoxic to hazardous in 535:15-9-9; they improve the rule clarity punctuation and grammar. The requirements in 535:15-9-10 for cytotoxic or hazardous drugs and in 535:15-9-11 quality assurance change to requirements to comply with all aspects of USP compounding and these rules.

535:15-10-1 through 535:15-10-16 change references from 'product' to 'preparation', since product has a different federal definition.

535:15-10-2 clarifies the Beyond-Use date definition, it changes 'Compounding', 'Hazardous drug', 'manufacturing', 'preparation', 'product' to the statutory definition; 'pharmacy generated products' are changed to 'pharmacy generated preparations'; and 'Component' is changed from ingredient in a product to ingredient in a preparation.

The revision in 535:15-10-3 clarifies requirements for pharmacists who performs or supervises the preparation of compounded preparations including compliance with USP Compounding Standards; The revisions in 535:15-10-4 modifies requirements for drug compounding facilities. The revisions in 535:15-10-5 modifies requirements for compounding equipment and logs. The revisions in 535:15-10-8 modifies drug compounding controls; corrects spelling, punctuation, and grammar; and adds reasons for compounding preparations.

The revision in 535:15-10-8.2 and 535:15-10-9 changes 'beyond-use date" to 'BUD' and corrects 'i.e.' to 'e.g.'. The revision in 535:15-10-12 change practitioner to prescriber. The revision in 535:15-10-14 changes employees to individuals. Added are violations in 535:15-10-16.

The revisions in 535:15-10-50 through 535:15-10-68 change references from compounded product to compounded preparation, due to the federal definition of product; they change the references from parenteral to compound preparation (in various forms of the words).

The revision in 535:15-10-50 corrects the rule reference in the purpose statement; the revision in 535:15-10-51 corrects the Beyond-use, component, compounding, Media-Fill Test, multiple-dose container, product, single-dose container definitions; they add manufacturer, NSF, and Sterile drug definitions.

The revision in 535:15-10-52 changes requirements for pharmacists who performs or supervises the compounding of preparations including compliance with USP Compounding Standards; they change training, evaluating and testing standards and records.

Revisions in 535:15-10-53 change general requirements. Changes in 535:15-10-54 include sterile preparations, risk level, quality assurance, personnel competence documentation, and in PIC responsibilities for high-risk CSP preparations. Revisions in 535:15-10-55 include changes in drug compounding facilities; in 535:15-10-56 in compounding equipment; in 535:15-10-57 in component selection; in 535:15-10-59 in drug compounding controls; in 535:15-10-61 in beyond use dating; in the beyond use date limits chart; in 535:15-10-62 change products to preparations and labeling; in 535:15-10-63 change records and reports. 535:15-10-64 is revoked since it would conflict with new federal law. The revisions in 535:15-10-65 cleans up rule and standards references. The change in 535:15-10-66 correct grammar and corrects to LAFW. The change in 535:15-10-67 corrects punctuation. Violations are added in 535:15-10-68.

The revision in 535:15-13-3 refers definitions of 'certify a prescription', 'pharmacy technician' and 'supportive personnel' to the definitions in the Act. The revision in 535:15-13-5 adds technician supervision requirements on the pharmacist, pharmacy and pharmacy manager. The revisions in 535:15-13-6 improve the clarity, change parenteral products to sterile compound preparations, correct grammar; and add the ability for pharmacy technicians to take verbal authorizations from licensed practitioners s or licensed practitioner's authorized agent for refill of only non-controlled prescriptions with no changes to strength or directions.

The revision in 535;15-13-7, prohibited duties, change 'may not' to 'shall not'; they improve the clarity of the pharmacist responsibilities; they require the pharmacist to take verbal authorizations on any refill of a controlled substance or any non-controlled prescription that has changes to strength or directions. The revision in 535:15-13-8 improves the clarity, grammar and punctuation of the rule; they add "any abuse of alcohol to the review factors regarding a pharmacy technician permit. The revisions in 535:15-13-10 add "of employment" to the title of the section. The revision in 535:15-13-11 remove the multiple location designation for duplicates; and indicate that a duplicate license for technicians who have renewed online may be printed by the technician online at no additional fee. The revisions in 535:15-13-13 clean up grammar and adds requirement that pharmacy technicians be trained and the training documented annually and that such be available in the pharmacy for inspections by the Board.

Revisions in 535:15-16-4 spell-out 'CDS' 'controlled dangerous substances'.

James Spoon asked that we standardize the way we cite Oklahoma law in these rules.

Cindy and Gary made suggestion to correct 535:15-3-7 by removing the word human, when visitors questioned this section.

Dorothy said in 535:15-6-4 (c) (1) to insert the word the ahead of Hospital Drug Room. She also said in 535:15-9-4 to delete the word pharmacy ahead of the overstruck beginning text for clarity.

Michael Mone, Cardinal (Nuclear), pointed out that USP are standards not requirements, so that change is made throughout this Chapter. Corrections are made in 535:15-9-2 definitions, 535:15-9-9 the word therapeutic is removed, 535:15-10-9 (e)(7), 535:15-10-12 correct labeling requirements for specific nuclear compounds, and the words according to or are removed from 535:15-10-53 (g), and in 535:15-17-5 (i)(1)(M) expiration date is changed to beyond use date (BUD) after discussion of Mr. Mone's suggestions.

The Appendix A is revoked and Appendix B is new.

CONTACT PERSON:

Dr. John A. Foust, Executive Director, Oklahoma State Board of Pharmacy, 2920 N Lincoln Boulevard Suite A, Oklahoma City, OK 73105-4212, Phone number 405 521-3815

DUE TO EXCESSIVE LENGTH OF THESE RULES (AS DEFINED IN OAC 655:10-7-12), THE FULL TEXT OF THESE RULES WILL NOT BE PUBLISHED. THE RULES ARE AVAILABLE FOR PUBLIC INSPECTION AT (OKLAHOMA STATE BOARD OF PHARMACY AT 2920 N LINCOLN BLVD STE A OKLAHOMA CITY, OK 73105) AND AT THE SECRETARY OF STATE'S OFFICE OF ADMINISTRATIVE RULES. THE FOLLOWING SUMMARY HAS BEEN PREPARED PURSUANT TO 75 O.S., SECTION 255(B):.

SUMMARY:

These rules amending Chapter 15 are summarized in the Analysis above.

Interested parties may obtain the full text of the rules from the Oklahoma State Board of Pharmacy.

[OAR Docket #15-574; filed 6-15-15]

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

[OAR Docket #15-575]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:
Subchapter 3. Pharmacies
535:15-3-9. Non-resident pharmacies [AMENDED]
AUTHORITY:
Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.7, 353.13, 353.13A, 353.16A, 353.17, 353.18, 353.20, 353.22, 353.24 - 353.26, 353.29, 354, and 367.8.
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n/a
ANALYSIS:
The revision in 535:15-3-9 includes requirements for non-resident pharmacies to submit inspection reports; to have an Oklahoma licensed Pharmacist in charge and update reporting requirements. The revisions improve the clarity of the rule. The changes describe inspection and investigation requirements. The revisions add Schedule V drugs to the scheduled drugs must be reported as well as correcting the new name of the Oklahoma drug monitoring program. The revision improves the clarity of the rule regarding toll-free telephone counseling requirement and improves the clarity of the rule regarding prescription integrity. The revisions describe drug diversion detection and prevention requirement for non-resident pharmacies. This rule was withdrawn, revised and approved February 25, 2015 and submitted on March 3, 2015 to correct an administrative error.
CONTACT PERSON:
Dr. John A. Foust, Executive Director, Oklahoma State Board of Pharmacy, 2920 N Lincoln Boulevard Suite A, Oklahoma City, OK 73105-4212, Phone number 405 521-3815

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 3. PHARMACIES

535:15-3-9. Non-resident pharmacies

(a) **Definitions. "Non-resident pharmacy"** means a pharmacy, not located in Oklahoma, which transacts or does business in Oklahoma by soliciting, receiving, dispensing, and/or delivering prescription medications and devices to Oklahoma residents.

(b) **Licensing requirements.** A non-resident pharmacy shall:

(1) make application and receive an annual non-resident pharmacy license at a fee set by the Board;

(2) maintain in good standing a pharmacy license in its resident state; ~~and,~~

(3) comply with the Oklahoma Secretary of State requirements for conducting business in this state;~~.~~

(4) submit on initial licensure and on renewals a written report of an inspection conducted within the previous twenty-four (24) months by the non-resident pharmacy's state or by an organization approved by the Board;

(5) be in a commercial location and not a personal dwelling or residence; and,

(6) submit on initial licensure the name and license number of an Oklahoma licensed pharmacist in charge (PIC) who is responsible for the non-resident pharmacy's compliance with Oklahoma laws. The name of the Oklahoma licensed PIC shall be reported to the Board, in writing, with each renewal and/or within 10 days of any change of such PIC.

(7) the pharmacy registrant may request, in writing, that the Board allow additional time for a new pharmacist-in-charge to get Oklahoma licensed in emergency or urgent situations. If the Board determines circumstances warrant they may grant up to a 90 day extension.

(c) **Laws and regulations.** Oklahoma pharmacy laws and regulations shall apply to the practice of pharmacy for the Oklahoma portion of the nonresident pharmacy's practice or operation.

(1) The pharmacist manager (also called pharmacist-in-charge (PIC)) and all other pharmacists performing pharmacist-only functions in Oklahoma licensed non-resident pharmacies must be currently licensed in the state in which they are practicing. The PIC must also be licensed by the Board.

(2) The pharmacist manager (PIC) and~~/or~~ pharmacy owner(s), ~~or~~ partners, ~~or~~ and corporate officer(s) shall be responsible for compliance with Oklahoma laws and regulations pertaining to the provisions of receiving, dispensing, and/or delivering of prescriptions or prescription medications and devices to Oklahoma residents.

~~(3) The requirement of 535:15-3-9 (c) and (e) shall apply only to the extent that such requirements are consistent with the laws and rules of the pharmacy's resident state.~~

(d) **Inspections.** Non-resident pharmacies are subject to inspection and investigation.~~as follows:~~

~~(1)~~ The Board ~~Oklahoma pharmacy inspectors~~ may conduct on-site periodic routine inspections and investigations during reasonable business hours.~~;/ or~~

~~(2) The Oklahoma Board may request copies of the resident state Board of Pharmacy's periodic routine inspection reports.~~

(e) **Records.** Prescription records documenting prescriptions delivered and distributed to Oklahoma residents shall be identifiable, readily retrievable and available for Board review.

(1) Records must be maintained for not less than five years.

(2) Patient records shall comply with 535:15-3-14.

(3) Schedule II, III, IV and V ~~IV~~ prescription records. These records shall ~~should~~ be sent to the Oklahoma Prescription Drug Monitoring ~~Control Reporting~~ program as set out in Title 63 of the Oklahoma Statutes.

(f) **Counseling services.** Non-resident pharmacies shall provide ~~an~~ accessible toll-free telephone counseling ~~service with~~by a licensed pharmacist for patient drug inquiries during regular working hours. The counseling provided shall comply with the pharmaceutical care requirements listed in OAC 535:10-9.

(g) **Prescription integrity.** A pharmacy or registrant shall not increase the quantity of a prescription without the authorization of the prescriber.

(h) **Written drug diversion detection and prevention.** The pharmacy and the pharmacy manager shall implement and follow a written drug diversion detection and prevention policy and procedure. This policy and procedure shall be available for Board review.

[OAR Docket #15-575; filed 6-15-15]

TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY
CHAPTER 20. MANUFACTURERS, REPACKAGERS ~~PACKAGERS~~, OUTSOURCING FACILITIES, ~~AND~~ WHOLESALERS, THIRD-PARTY LOGISTICS PROVIDERS, AND MEDICAL GAS SUPPLIERS AND DISTRIBUTORS

[OAR Docket #15-576]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Purpose
535:20-1-1. Purpose [AMENDED]
Subchapter 3. Manufacturers
535:20-3-1.1. Purpose [AMENDED]
535:20-3-1.2. Definitions [NEW]
535:20-3-2. Registration; manufacturer permit requirement [REVOKED]
535:20-3-3. ~~Minimum required information for permit~~ Manufacturer licensing requirements [AMENDED]
535:20-3-4. ~~Minimum qualifications~~ Minimum required information for licensure [AMENDED]
535:20-3-4.1. Minimum qualifications [NEW]
535:20-3-5. Personnel [REVOKED]
535:20-3-5.1. Personnel [NEW]
535:20-3-6. Minimum requirements for Rx Only drug storage, handling, maintenance and records [REVOKED]
535:20-3-6.1. Facility requirements [REVOKED]
535:20-3-6.2. Multiple Licensing [REVOKED]
535:20-3-6.3. Security [REVOKED]
535:20-3-6.4. Storage [REVOKED]
535:20-3-6.5. Examination of materials [REVOKED]
535:20-3-6.6. Returned, damaged, and outdated drugs [REVOKED]
535:20-3-6.7. Recordkeeping [REVOKED]
535:20-3-6.8. Written policies and procedures [REVOKED]
535:20-3-6.9. Responsible persons [REVOKED]
535:20-3-6.10. Compliance with federal, state and local laws [AMENDED]
535:20-3-6.11. Salvaging and reprocessing [REVOKED]
535:20-3-8. Violations and Penalties [REVOKED]
535:20-3-9. Prohibited conduct [AMENDED]
535:20-3-10. Violations and penalties [NEW]
Subchapter 5. Repackagers ~~Packagers~~
535:20-5-1. Definitions [REVOKED]
535:20-5-1.1. Purpose [AMENDED]
535:20-5-2. Registration; packager permit requirements [REVOKED]
535:20-5-2.1. Definitions [NEW]
535:20-5-3. Minimum required information for permit [REVOKED]
535:20-5-3.1. Repackager licensing requirement [NEW]
535:20-5-4. Minimum qualifications [REVOKED]
535:20-5-4.1. Minimum required information for licensure [NEW]
535:20-5-4.2. Minimum qualifications [NEW]
535:20-5-5. Personnel [REVOKED]
535:20-5-5.1. Personnel [NEW]
535:20-5-6. Minimum requirements for storage, handling, maintenance and records [REVOKED]
535:20-5-6.1. Facility requirements [REVOKED]
535:20-5-6.2. Multiple Licensing [REVOKED]
535:20-5-6.3. Security [REVOKED]
535:20-5-6.4. Storage [REVOKED]
535:20-5-6.5. Examination of materials [REVOKED]
535:20-5-6.6. Returned, damaged, and outdated drugs [REVOKED]
535:20-5-6.7. Recordkeeping [REVOKED]
535:20-5-6.8. Written policies and procedures [REVOKED]
535:20-5-6.9. Responsible persons [REVOKED]
535:20-5-6.10. Compliance with federal, state and local laws [AMENDED]
535:20-5-6.11. Salvaging and reprocessing [REVOKED]
535:20-5-8. Violations and Penalties [REVOKED]
535:20-5-9. Prohibited conduct [AMENDED]
535:20-5-10. Violations and Penalties [NEW]
Subchapter 6. Outsourcing Facilities [NEW]
535:20-6-1. Purpose [NEW]
535:20-6-2. Definitions [NEW]
535:20-6-3. Outsourcing facility licensing requirement [NEW]
535:20-6-4. Minimum required information for licensure [NEW]
535:20-6-5. Minimum qualifications [NEW]
535:20-6-6. Personnel [NEW]
535:20-6-7. Compliance with federal, state and local laws [NEW]
535:20-6-8. Prohibited conduct [NEW]
535:20-6-9. Violations and penalties [NEW]
Subchapter 7. ~~Wholesalers~~Wholesale Distributor ~~and Pedigree~~ Rules
535:20-7-1. Purpose [AMENDED]
535:20-7-2. Definitions [AMENDED]
535:20-7-3. Wholesale ~~drug~~ distributor licensing requirement [AMENDED]
535:20-7-4. Minimum required information for licensure [AMENDED]
535:20-7-5. Minimum qualifications [AMENDED]
535:20-7-6. Personnel [AMENDED]
535:20-7-7. Minimum requirements for the storage, handling, transport, and shipment of drugs and/or devices and establishment and maintenance of drug records [REVOKED]
535:20-7-7.1. Facility requirements [REVOKED]
535:20-7-7.2. Multiple Licensing [REVOKED]
535:20-7-7.3. Security and anti-counterfeiting [REVOKED]
535:20-7-7.4. Storage [REVOKED]
535:20-7-7.5. Examination of materials [REVOKED]
535:20-7-7.6. Drug returns, and returned, damaged, and outdated drugs [REVOKED]
535:20-7-7.7. Recordkeeping; including pedigree requirement [REVOKED]
535:20-7-7.8. Written policies and procedures [REVOKED]
535:20-7-7-10. Compliance with federal, state and local laws [AMENDED]
535:20-7-9. Violations and penalties [REVOKED]
535:20-7-9.1. Prohibited Conduct [AMENDED]
535:20-7-10. Violations and penalties [NEW]
Subchapter 8. Third-Party Logistics Providers [NEW]
535:20-8-1. Purpose [NEW]
535:20-8-2. Definitions [NEW]
535:20-8-3. Third-party logistics provider licensing requirement [NEW]
535:20-8-4. Minimum required information for licensure [NEW]
535:20-8-5. Minimum qualifications [NEW]
535:20-8-6. Personnel [NEW]
535:20-8-7. Compliance with federal, state and local laws [NEW]
535:20-8-8. Prohibited conduct [NEW]

535:20-8-9. Violations and penalties [NEW]
Subchapter 9. Medical Gas Suppliers and Distributors
535:20-9-2. Definitions [AMENDED]
535:20-9-3. Medical gas suppliers [AMENDED]
535:20-9-4. Medical gas distributors [AMENDED]
535:20-9-5. Violations and penalties [AMENDED]
535:20-9-6. Prohibited conduct [AMENDED]

AUTHORITY:

Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.7, 353.13, 353.13A, 353.16A, 353.17, 353.18, 353.20, 353.22, 353.24 - 353.26, 353.29, 354, and 367.8; Title 51 OS 24A et seq.; Title 75 OS, Sec 2-201, 2-208, and 2-210.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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Approved by Governor's declaration on June 8, 2015

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June 8, 2015

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SUPERSEDED EMERGENCY ACTION:

n/a

INCORPORATIONS BY REFERENCE:

Incorporated standards:

United States Code ,21 USC 360eee
59 OS 353.1

Incorporated rules:

535:20-3-1.2
535:20-5-2.1
535:20-6-2
535:20-7-2
535:20-8-2

Availability:

8:00 a.m. to 4:30 p.m., Monday through Friday at Oklahoma State Board of Pharmacy, 2920 N. Lincoln Boulevard Suite A, Oklahoma City, OK 73015-4212, 405-521-3815

ANALYSIS:

The revisions in this chapter are required due to the federal drug quality and security act which created new categories and changed application, requirements and procedures.

The revision in 535:20-1-1 changes the purpose statement to bring it into compliance with federal law changes. The revision in 535:20-3-1.2 definitions refer to Oklahoma and federal statute definitions.

Revoked sections include 535:20-3-2, 535:20-3-5, 535:20-3-6, 535:20-3-6.1, 535:20-3-6.2, 535:20-3-6.3, 535:20-3-6.4, 535:20-3-6.5, 535:20-6.6, 535:20-3-6.7, 535:20-3-6.8, 535:20-3-6.9, 535:20-3-6.11, 535:20-3-8, 535:20-5-2, 535:20-5-3, 535:20-5-4, 535:20-5-5, 535:20-5-6, 535:20-5-6.1, 535:20-5-6.2, 535:20-5-6.3, 535:20-5-6.4, 535:20-5-6.5, 535:20-5-6.6, 535:20-5-6.7, 535:20-5-6.8, 535:20-5-6.9, 535:20-5-6.11 535:20-5-8, 535:20-7-7, 535:20-7-7.1, 535:20-7-7.1, 535:20-7-7.2, 535:20-7-7.3, 535:20-7-7.4, 535:20-7-7.5, 535:20-7-7.6, 535:20-7-7.7, 535:20-7-7.8, and 535:20-7-9.

The revisions in sections 535:20-3-3, 535:20-3-4, 535:20-3-9, 535:20-5-1, and 535:20-5-6.10 make changes in manufacturing requirements to comply with federal law changes. New rule 535:20-3-4.10 adds minimum qualifications for manufacturers; while new 535:20-3-5.1 add personnel requirements; Rules 35:20-5-6.10, and new 535:20-3-10 adds violations and penalties.

The revisions in sections 535:20-5-1.1, 535:20-5-2.1. 535:20-5-3.1, 535:20-5-9 and new rules in 535:20-5-4.10 make changes in repackager requirements, formerly called packager in Oklahoma, to comply with federal law changes; and add definitions which refer to Oklahoma statutes and federal statute definitions.

Revisions in 535:20-5-4.10 add minimum qualifications for repackagers; and add personnel requirements in 535:20-5-5.1, and add new 535:20-5-10 adds violations and penalties.

Federal law created a new category of 'outsourcing facilities' that require state licensure. The new rules in 535:20-6-1, 535:20-6-2, 535:20-6-3, 535:20-6-4, 535:6-5, 535:20-6-6, 535:20-6-7, 535:20-6-8, and 535:20-6-9 implement the new federal licensing category that is within the statutory authority of Title 59 OS Section 353.18 licensing requirements.

The revisions in sections 535:20-7-1, 535:20-7-2, 535:20-7-3, 535:20-7-4, 535:20-7-5, 535:20-7-6, 535:20-7-7.10, 535:20-7-8, 535:20-7-9.1, and make changes in wholesale distributor requirements, formerly called wholesaler in Oklahoma, to comply with federal law changes; and add definitions which refer to Oklahoma statutes and federal statute definitions. Added are violations and penalties for wholesale distributors in 535:20-7-10.

Federal law created a new category of 'third-party logistics providers' that require state licensure. The new rules in 535:20-8-1, 535:20-8-2, 535:20-8-3, 535:20-8-4, 535:20-8-5, 535:20-8-6, 535:20-8-7, 535:20-8-8, and 535:20-8-9 implement the new federal licensing category of third-party logistics providers that is within the statutory authority of Title 59 OS Section 353.18 licensing requirements.

The revision in 535:20-9-2 changes medical practitioner to prescriber. The revision in 535:20-9-3 and 535:20-9-4 updates references to the Board; it changes permit to license; it restriction a medical gas supplier / distributor from locating within a residence; it cleans up language, corrects spelling, and renumbers the rules to make the section more clear. It changes medical practitioner to prescriber. The revision in 535:20-9-5 cleans up the language in violations and penalties to make improve the clarity of the rule. The revision in 535:20-9-6 prohibited conducts add requirements to comply with the new federal law and state law.

CONTACT PERSON:

Dr. John A. Foust, Executive Director, Oklahoma State Board of Pharmacy, 2920 N Lincoln Boulevard Suite A, Oklahoma City, OK 73105-4212, Phone number 405 521-3815

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 1. GENERAL PURPOSE

535:20-1-1. Purpose

(a) The rules in this Chapter regulate the manufacture, repackaging, distribution, compounding and sale or storage of drugs, medicines, chemicals and poisons and the dispensing of drugs and medicines in all places where drugs and medicines are compounded, dispensed or stored. The rules regulate any and all places, including premises, vehicles, equipment, contents and records, where drugs, medicines, chemicals or poisons are sold, stored, vended, given away, compounded, dispensed, ~~or~~ manufactured, repackaged or distributed.

(b) The rules in this Chapter further concern the Board's authority and duty to confiscate all drugs, medicines, chemicals or poisons found to be sold, stored, vended, given away, compounded, dispensed, ~~or~~ manufactured, repackaged or distributed contrary to the provisions of ~~Title~~ 59 O.S., Section 353 et seq.

(c) The rules in this Chapter prescribe minimum standards, for the issuance of new or renewal licenses~~permits~~, with respect to floor space and other physical characteristics necessary to the maintenance of professional surroundings and to the protection of the safety and welfare of the public.

(d) The rules of this Chapter are necessary to protect the health, safety, and welfare of the public.

(e) The rules in this Chapter implement the Federal Food, Drug, and Cosmetic Act, as amended by the Drug Quality and Security Act of 2013, other applicable federal statutes and rules and the Act, 59 O.S. Section 353 et seq. and the Board's Rules, OAC 535.~~The wholesale regulations of this Chapter are necessary to implement the Federal Food & Drug Administration (FDA) Prescription Drug Marketing Act (PDMA) of 1987~~.

SUBCHAPTER 3. MANUFACTURERS

535:20-3-1.1. Purpose

(a) The rules in this Subchapter set out the minimum ~~standards and requirement~~requirements for ~~persons who must license~~ licensure as a manufacturer ~~as defined in 59 O.S. 353.1 before engaging in manufacturing as required in 59 O.S. Section 353.18 (B) and (C)~~.

(b) The rules in~~of~~ this Subchapter are to implement the ~~requirement in the Pharmacy Practice Act and may include requirements for the Utilization of Used Prescription Medication Act.~~ Federal Food, Drug, and Cosmetic Act, as amended by the Drug Quality and Security Act of 2013, other applicable federal statutes and rules and the Act, 59 O.S. Section 353 et seq. and the Board's Rules, OAC 535.

535:20-3-1.2. Definitions

The words or terms defined in 59 O.S. Section 353.1 and in 21 U.S.C. § 360eee are incorporated herein by this reference; and these words and terms shall have the same meaning when used in this Subchapter as defined in these statutes, unless the context clearly indicates otherwise.

535:20-3-2. Registration; manufacturer permit requirement [REVOKED]

~~(a) All manufacturers of Rx Only (dangerous) drugs conducting interstate and/or intrastate transactions in Oklahoma shall register annually with the Board of Pharmacy.~~

~~(1) Permits shall be issued only to those manufacturers which satisfy the provisions of Title 59, O.S., Section 353.18 (B)(1)(2) et seq., and all rules of this Title, et seq.~~

~~(2) Each manufacturer must comply with the Federal Food, Drug and Cosmetic Act Good Manufacturing Practices Act (GMPA, 21 U.S.C., Sec. 331 et seq.), the Prescription Drug Marketing Act of 1987 (PDMA, 21 U.S.C., Sec. 331 et seq.) and/or any other applicable federal, state, or local laws and regulations.~~

~~(b) A manufacturer permit entitles the permit holder to manufacture and wholesale Rx Only drugs (prescription drugs) from the licensed location.~~

~~(c) A manufacturer permit is only valid for the name, ownership and location listed on the permit.~~

~~(d) A new permit is required within 10 days if name, ownership or location changes.~~

~~(e) Each manufacturing location must be licensed.~~

~~(f) Each manufacturer whose product is sold in Oklahoma is required to obtain and maintain an Oklahoma manufacturer permit.~~

535:20-3-3. ~~Minimum required information for permit~~ Manufacturer licensing requirements

(a) ~~Applicants shall be registered with the federal Food and Drug Administration (FDA) as a manufacturer.~~ If Oklahoma is the state in which a prescription drug is manufactured or is the state from which or into which a prescription drug of a manufacturer is shipped, this prescription drug may not be manufactured in and/or shipped into or out of Oklahoma unless each facility of such manufacturer is licensed in Oklahoma. Such license shall be renewed annually by application and payment of renewal fees.

(b) A manufacturer shall also be licensed as a manufacturer by the Secretary of the U.S. Department of Health and Human Services, Food and Drug Administration. ~~All manufacturer applicants must meet the requirements under the Oklahoma Pharmacy Act, this Title and the rules in 535:25 for applicants.~~

~~(c) Manufacturer applicants must submit a satisfactorily completed application together with the required fee annually. This application shall include, at least, the following:~~

~~(1) The name, full business address, and telephone number;~~

~~(2) All trade or business names used by the manufacturer applicant;~~

~~(3) Address, telephone numbers, and the names of contact persons for the manufacturing facility;~~

~~(4) The type of ownership or operation (e.g., partnership, corporation, or sole proprietorship);~~

~~(5) The name(s) of the owner and/or operator of the manufacturer applicant; and~~

~~(6) Any other information the Board deems necessary to protect the public health.~~

(c) A manufacturer license is only valid for the name, ownership and location listed on the license. Changes of name, ownership or location require a new manufacturer license.

(d) Changes in any information required for licensure must be reported to the Board, in writing, within ten (10) days (e.g. facility manager, designated representative, telephone number, etc.).

(e) When manufacturer operations are conducted at more than one location, each location shall be licensed by the Board.

(f) A manufacturer shall not operate from a place of residence.

(g) The manufacturing facility shall be located apart and separate from any retail pharmacy licensed by the Board.

(h) A manufacturer must publicly display all licenses and have readily available the most recent state and/or federal inspection reports.

535:20-3-4. ~~Minimum qualifications~~ Minimum required information for licensure

~~(a) All manufacturers must conform to the federal Good Manufacturing Practices GMPA, and/or any other applicable federal, state or local laws and regulations.~~

~~(b) The minimum qualifications for manufacturers shall be the same as those set forth in 535:25 and this Chapter.~~

~~(c) The Board shall consider, at a minimum, the following factors in reviewing the qualifications of persons who engage in manufacturer of drugs or devices:~~

~~(1) Any convictions of the applicant under any federal, state, or local laws relating to drug samples, manufacturer, wholesale or retail drug distribution, or distribution of controlled substances;~~

~~(2) Any felony convictions of the applicant under federal, state, or local laws;~~

~~(3) The applicant's past experience in the manufacture or distribution of drugs, including controlled substances;~~

~~(4) The furnishing by the applicant of false or fraudulent material in any application made in connection with drug or device manufacturing or distribution;~~

~~(5) Suspension, sanction, or revocation by federal, state, or local government of any license currently or previously held by the applicant for the manufacture or distribution of any drugs, including controlled substances; or by any of its owners for violation of state or federal laws regarding drugs or devices;~~

~~(6) Compliance with licensing requirements under previously granted licenses, if any;~~

~~(7) Compliance with requirements to maintain and/or make available to the State Board of Pharmacy or to federal, state, or local law enforcement officials those records required under this section; and,~~

~~(8) Any other factors or qualifications the Board considers relevant to and consistent with the public health and safety.~~

~~(d) The Board shall have the right to deny a license to an applicant if it determines that the granting of such a license would not be consistent with the public health and safety.~~

(a) A manufacturer applicant must submit a satisfactorily completed Board-approved application together with the required fee.

(1) New applicants shall provide, at least, the following:

(A) Applicant's full name, all trade or business names used, full business address and telephone number;

(B) Type of ownership, e.g. individual, partnership, limited liability company or corporation;

(C) Name(s) of the owner(s) of the applicant, including:

(i) if a person, the name, address, Social Security number and date of birth;

(ii) if other than a person, the name, address, and Social Security number and date of birth of each partner, limited liability company member, or corporate officer and corporate director and the federal employer identification number;

(iii) if a corporation, the State of incorporation; and

(iv) if a publicly traded corporation, the information in (a)(1)(C)(ii) is not required for corporate officers and corporate directors.

(D) Names of designated representatives and facility managers of the applicant, their Social Security numbers and dates of birth;

(E) Evidence of criminal background checks and fingerprinting of the applicant, if a person, and of all of applicant's designated representatives and facility managers;

(F) Proof of licensure by the U.S. Secretary of Health and Human Services, Food and Drug Administration, and, if applicable, by the state where the applicant is located (home state); and,

(G) Upon the Board's written request, a list of all manufacturers, wholesale distributors, third-party logistics providers and dispensers for whom the manufacturer provides services at such facility.

(2) Renewal applicants shall provide those items listed above.

(3) Any other information the Board deems necessary to protect the public health and safety.

(b) The Board may use an outside agency, such as a National Association of Boards of Pharmacy (NABP), at its discretion, to inspect manufacturers.

535:20-3-4.1. Minimum qualifications

(a) The Board shall consider, at a minimum, the following factors in determining the eligibility for and renewal of licensure of manufacturers:

(1) Any finding by a law enforcement agency or regulatory agency that the applicant or any of its owners have violated any federal, state, or local laws or foreign laws;

(2) Suspension, revocation or any other sanction against a license currently or previously held by the applicant or any of its owners for violations of state or federal laws;

(3) Any finding that the applicant or any of its owners are guilty of or pleaded guilty or nolo contendere to violating federal, state, or local criminal laws;

(4) The furnishing by the applicant of false or fraudulent material in any application;

(5) Failure to maintain and/or make available to the Board or to federal, state, or local law enforcement officials those records required to be maintained by manufacturers;

(6) Any licensee who has no record of manufacturing prescription drugs during routine inspection may have its subsequent renewal application referred to the Board for review and possible approval or disapproval, and such review may require the licensee to appear before the Board; and

(7) Any other factors or qualifications that the Board considers relevant to and consistent with the public health and safety.

(b) A manufacturer shall have and follow a diversion detection and prevention plan that includes all prescription drugs.
(c) The Board shall have the right to deny a license to an applicant if it determines that granting such a license would not be consistent with the public health and safety.

535:20-3-5. Personnel [REVOKED]

~~Personnel employed in manufacturing shall have sufficient education, training and/or experience to perform assigned functions and comply with federal, state and local licensing requirements.~~

535:20-3-5.1. Personnel

(a) Manufacturers shall establish and maintain for Board inspection a list of each partner, limited liability company member or corporate officer and corporate director, as well as designated representatives and facility managers, including a description of their duties and a summary of their qualifications.
(b) Each manufacturer shall designate, in writing on a Board-approved form, a person to serve as the designated facility manager of the manufacturer for each location licensed. The facility manager is responsible for all aspects of the operation of the manufacturer.
(c) No manufacturer shall have as an owner, designated representative or facility manager anyone convicted of any felony for conduct relating to manufacturing prescription drugs, any felony for violation of 21 U.S.C. § 331(i) or (k) or any felony for violation of 18 U.S.C. § 1365 relating to product tampering. No manufacturer shall have as an owner, designated representative or facility manager anyone who has violated federal or state requirements for licensure that presents a threat of serious adverse health consequences or death to humans.

535:20-3-6. Minimum requirements for Rx Only drug storage, handling, maintenance and records [REVOKED]

~~The following decimal sections shall describe the minimum requirements for the storage and handing of drugs, and for the establishment and maintenance of drug records by manufacturers and their officers, agents, representatives, and employees.~~

535:20-3-6.1. Facility requirements [REVOKED]

~~(a) All manufacturers of drugs shall conform to U. S. Food and Drug Administration (FDA) Current Good Manufacturing Practice Regulations (CGMP).~~
~~(b) All manufacturers shall conform to the Oklahoma Pharmacy Act and the rules of this Title.~~
~~(c) Each facility at which drugs are stored, warehoused, handled, held, offered, marketed, or displayed shall:~~
~~(1) Be licensed by the Board;~~
~~(2) Be of suitable size and construction to facilitate cleaning, maintenance, and proper operations;~~
~~(3) Have storage areas designed to provide adequate lighting, ventilation, temperature, sanitation, humidity, space, equipment and security conditions;~~
~~(4) Have a quarantine area for storage of drugs that are outdated, damaged, deteriorated, misbranded, or adulterated, or that are in immediate or sealed, secondary containers that have been opened;~~
~~(5) Be maintained in a clean and orderly condition; and,~~
~~(6) Be free from infestation by insects, rodents, birds, or vermin of any kind.~~

535:20-3-6.2. Multiple licensing [REVOKED]

~~(a) A manufacturing facility shall not be in a facility where a retail pharmacy is located.~~
~~(b) The manufacturing facility shall be located apart and separate from any retail pharmacy, licensed by the Board of Pharmacy, as set forth in this Title and 535:25-3-5.~~

535:20-3-6.3. Security [REVOKED]

~~(a) Each facilities used for manufacturing shall be secure from unauthorized entry.~~
~~(1) Access from outside the premises shall be kept to a minimum and be well-controlled.~~
~~(2) The outside perimeter of the premises shall be well-lighted.~~
~~(3) Entry into areas where drugs are held shall be limited to authorized personnel.~~
~~(b) All facilities shall be equipped with an alarm system to detect entry after hours.~~
~~(c) All manufacturers shall establish and maintain controls and systems that protect against, detect, and document any instances of theft, diversion, or counterfeiting. When appropriate, the security system shall provide protection against theft or diversion that is facilitated or hidden by tampering with computers or electronic records.~~
~~(d) All manufacturers shall establish and maintain a suspicious order monitoring program for controlled substances and dangerous drugs with a high likelihood of abuse:~~
~~(1) The manufacturer must not ship the customer's order if the order is confirmed as suspicious;~~
~~(2) Each manufacturer shall notify the Board, within ten (10) days, if an order is confirmed as suspicious; and,~~
~~(3) Manufacturers shall establish guidelines and procedures for identifying dangerous drugs with a high likelihood of abuse and suspicious orders.~~

535:20-3-6.4. Storage [REVOKED]

~~All drugs shall be stored at appropriate temperatures and under appropriate conditions in accordance with requirements, if any, in the labeling of such drugs, or with the requirements in the current edition of an official compendium, such as the United States Pharmacopeia/National Formulary (USP/NF).~~
~~(1) If no storage requirements are established for a drug, the drug may be held at 'controlled' room temperature, as defined in an official compendium, to help ensure that its identity, strength, quality, and purity are not adversely affected.~~
~~(2) Appropriate manual, electromechanical, or electronic temperature and humidity recording equipment,~~

~~devices, and/or logs shall be utilized to document proper storage of drugs.~~

~~(3) The recordkeeping requirement in this Title for manufacturers shall be followed for all stored drugs.~~

535:20-3-6.5. Examination of materials [REVOKED]

~~(a) Upon receipt, each outside shipping container shall be visually examined for identity and to prevent the acceptance of contaminated drugs or chemicals that are unfit. This examination shall be adequate to reveal container damage that would suggest possible contamination or other damage to the contents.~~

~~(b) Each outgoing shipment shall be carefully inspected for identity of the drug products and to ensure that there is no delivery of drugs that have been damaged in storage or held under improper conditions.~~

~~(c) The recordkeeping requirement in this Title for manufacturers shall be followed for all incoming and outgoing drugs.~~

535:20-3-6.6. Returned, damaged, and outdated drugs [REVOKED]

~~(a) Drugs that are outdated, damaged, deteriorated, misbranded, or adulterated shall be quarantined and physically separated from other drugs until they are destroyed.~~

~~(b) If the conditions under which a drug has been returned cast doubt on the drug's safety, identity, strength, quality or purity, then the drug shall be destroyed, unless examination, testing, or other investigation proves that the drug meets appropriate standards of safety, identity, quality, strength, and purity. In determining whether the conditions under which a drug has been returned cast doubt on the drug's safety, identity, strength, quality or purity, the manufacturer shall consider, among other things:~~

~~(1) The conditions under which the drug has been held, stored or shipped before or during its return; and,~~

~~(2) The condition of the drug and its container, carton, or labeling, as a result of storage or shipping.~~

~~(c) The recordkeeping requirements for manufacturers in this Title shall be followed for all outdated, damaged, deteriorated, misbranded or adulterated drugs.~~

535:20-3-6.7. Recordkeeping [REVOKED]

~~(a) Manufacturers shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of drugs.~~

~~(b) Inventories and records shall be made available for inspection and photocopying by authorized federal, state, or local law enforcement agency officials for a period of two (2) years following disposition of the drugs.~~

~~(c) Records described in this section that are kept at the inspection site or that can be immediately retrieved by computer or other electronic means shall be readily available for authorized inspection during the retention period. Records kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within two (2) working days of a request by an authorized official of a federal, state, or local law enforcement agency.~~

~~(d) Each manufacturer should maintain an ongoing list of persons with whom they do business.~~

535:20-3-6.8. Written policies and procedures [REVOKED]

~~(a) Manufacturers shall establish, maintain, and adhere to written policies and procedures, which shall be followed for the receipt, security, storage, inventory, and distribution of drugs, including policies and procedures for identifying, recording, and reporting losses or thefts, and for correcting all errors and inaccuracies in inventories.~~

~~(b) Manufacturers shall include in their written policies and procedures the following:~~

~~(1) A procedure to be followed for handling recalls and withdrawals of drugs. Such procedure shall be adequate to deal with recalls and withdrawals due to any:~~

~~(A) Action initiated at the request of the Food and Drug Administration (FDA) or other federal, state, or local law enforcement or other government agency, including the Board of Pharmacy;~~

~~(B) Voluntary action by the manufacturer to remove defective or potentially defective drugs from the market; or~~

~~(C) Action undertaken to promote public health and safety by replacing of existing merchandise with an improved product or new package design.~~

~~(2) A procedure to ensure that manufacturers prepare for, protect against, and handle a crisis that affects security or operation of any facility in the event of strike, fire, flood, or other natural disaster, or other situations of local, state or national emergency.~~

~~(3) A procedure to ensure that any outdated drugs shall be segregated from other drugs and destroyed.~~

~~(A) This procedure shall provide for written documentation of the disposition of outdated drugs.~~

~~(B) This documentation shall be maintained for two (2) years after disposition of the outdated drugs.~~

535:20-3-6.9. Responsible persons [REVOKED]

~~Manufacturers shall establish and maintain lists of officers, directors, managers and other persons in charge of drug manufacturer manufacturing, distribution, storage, and handling, including a description of their duties and a summary of their qualifications.~~

535:20-3-6.10. Compliance with federal, state and local laws

(a) A manufacturer ~~Manufacturers~~ shall operate in compliance with ~~applicable federal, state, and local laws and regulations~~ the Federal Food, Drug, and Cosmetic Act Good Manufacturing Practices, 21 U.S.C. §§ 321, 351, 352, 355, 360b, 371, 374; 42 U.S.C. §§ 216, 262, 263a, 264; and 21 C.F.R. Parts 210 and 211.

(b) A manufacturer ~~Manufacturers~~ shall operate in compliance with all applicable ~~permit the Board of Pharmacy and authorized~~ federal, state, and local laws and regulations, including, but not limited to, the Drug Quality and Security Act of

2013 and rules promulgated thereunder and the Act, 59 O.S. Section 353, et seq. and the Board's Rules, OAC 535. ~~law enforcement officials to enter and inspect their premises and delivery vehicles, and to audit their records and written operating procedures and to confiscate records, to the extent authorized by law and rule.~~

(c) A manufacturer shall allow the Board and authorized federal, ~~Manufacturers that deal in controlled substances shall register with the appropriate state controlled substance authority and with the Drug Enforcement Administration (DEA), and shall comply with all applicable~~ state, and local ~~and DEA regulations.~~ law enforcement officials to enter and inspect its premises and delivery vehicles, to audit its records and written operating procedures, and to confiscate prescription drugs and records to the extent authorized by law or rules.

(d) A manufacturer shall only ship to the address listed on the licensee's license.

535:20-3-6.11. Salvaging and reprocessing [REVOKED]

~~Manufacturers shall be subject to the provisions of any applicable federal, state or local laws or regulations that relate to drug product salvaging or reprocessing including U.S. 21 CFR Parts 207, 210 and 211.~~

535:20-3-8. Violations and Penalties [REVOKED]

~~(a) Penalties for violations of this Subchapter and of federal, state and local laws and regulations are listed in Title 59, Oklahoma Statutes, Section 353, et seq.~~

~~(b) Rules of conduct, violations of the rules of conduct and other requirements of manufacturers and all applicants can be found in this Chapter and in 535:25.~~

535:20-3-9. Prohibited conduct

(a) The following shall be considered prohibited conduct and be a violation of these rules: Failure to follow all applicable requirements of state and federal statutes and regulations, including, but not limited to, the Drug Quality and Security Act of 2013 and rules promulgated thereunder, the Act, 59 O.S. Section 353, et seq. and the Board's rules, OAC 535.

~~(1) Engaging in the manufacturing of drugs~~

~~(A) with intent to defraud or deceive, failing to maintain or provide a complete and accurate record, when required;~~

~~(B) destroying, altering, concealing, or failing to maintain complete and accurate records for any drug manufactured, when required;~~

~~(C) knowingly purchasing or receiving drugs from a person, not authorized to distribute drugs, or,~~

~~(D) selling, bartering, brokering, or transferring drugs to a person not authorized to purchase drugs, under the jurisdiction in which the person receives the drug(s).~~

~~(2) Forging, counterfeiting, or falsely creating any label for a drug(s) or who falsely represents any factual matter contained in any label of a drug(s).~~

~~(3) Altering, mutilating, destroying, obliterating, or removing the whole or any part of the labeling of a drug or the commission of any other act with respect to a drug that results in the drug being misbranded.~~

~~(4) Manufacturing, purchasing, selling, delivering or bringing into the state contraband drug(s), or any one who illegally possesses any amount of contraband drug(s); or,~~

(b) Any violation of the rules of registrant conduct in 535:25-9 is prohibited conduct.

535:20-3-10. Violations and penalties

(a) Penalties for violations of this Subchapter and of federal, state and local laws and regulations are listed in 59 O.S. Section 353, et seq.

(b) Rules of conduct, violations of the rules of conduct and other requirements of all applicants can be found in 535:25.

SUBCHAPTER 5. REPACKAGERS ~~PACKAGERS~~

535:20-5-1. Definitions [REVOKED]

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

~~**"Packager"** means packager as defined in Title 59 O.S. Section 353.1. Any person, firm, or corporation, except a pharmacy, who transfers dangerous drugs from one container to another of any type.~~

~~**"Prescription drug"** means "prescription drug" as defined in Title 59 O.S. Section 353.1.~~

~~**"Wholesaler"** means a "Wholesaler" as defined in Title 59 O.S. Section 353.1.~~

535:20-5-1.1. Purpose

(a) The rules in this Subchapter set the minimum requirements for licensure as a repackager. ~~standards and requirement for persons who must license as a packager as defined in 59 O.S. 353.1 before engaging in packaging as required in 59 O.S. Section 353.18 (B) and (C).~~

(b) The rules of this Subchapter are to implement the Federal Food, Drug, and Cosmetic Act, as amended by the Drug Quality and Security Act of 2013, other applicable federal statutes and rules and the Act, 59 O.S. Section 353 et seq. and the Board's Rules, OAC 535. ~~the requirement in the Pharmacy Practice Act.~~

535:20-5-2. Registration; packager permit requirements [REVOKED]

~~(a) All packagers of Rx Only (dangerous) drugs conducting interstate and/or intrastate transactions in Oklahoma shall register annually with the Board of Pharmacy.~~

~~(b) Permits shall be issued only to those packagers who possess a wholesaler permit and satisfy the provisions of:~~

~~(1) Title 59, O.S., Section 353.18 (B)(1)(2) et seq.,~~

~~(2) the rules of this Title,~~

~~(3) the Federal Food, Drug and Cosmetic Act Good Manufacturing Practice Act (GMPA, 21 U.S.C., Sec. 331 et seq.);~~

~~(4) the Prescription Drug Marketing Act (PDMA, 21 U.S.C., Sec. 331 et seq.); and/or,~~

~~(5) any other applicable federal, state, or local laws and regulations.~~

~~(c) A packager permit is only valid for the name, ownership and location listed on the permit.~~

~~(d) A new packager permit is required within 10 days if name, ownership or location changes.~~

~~(e) Each location shall possess a packager permit.~~

~~(f) Each packager whose product is sold in Oklahoma is required to obtain and maintain an Oklahoma packager permit.~~

535:20-5-2.1. Definitions

The definitions of words or terms defined in 59 O.S. Section 353.1 and 21 U.S.C. § 360eee are incorporated herein and these words and terms shall have the same meaning when used in this Subchapter as defined in these statutes, unless the context clearly indicates otherwise.

535:20-5-3. Minimum required information for permit [REVOKED]

~~(a) Applicants shall be registered with the federal Food and Drug Administration (FDA) and meet the federal requirements to repackage.~~

~~(b) All packager applicants must meet the requirements under the Oklahoma Pharmacy Act, this Title and the rules in 535:25 for applicants.~~

~~(c) Packager applicants must submit a satisfactorily completed application together with the required fee annually. This application shall include, at least, the following:~~

~~(1) The name, full business address, and telephone number;~~

~~(2) All trade or business names used by the manufacturer applicant;~~

~~(3) Address, telephone numbers, and the names of contact persons for the manufacturing facility;~~

~~(4) The type of ownership or operation (e.g., partnership, corporation, or sole proprietorship);~~

~~(5) The name(s) of the owner and/or operator of the manufacturer applicant; and~~

~~(6) Any other information the Board deems necessary to protect the public health.~~

535:20-5-3.1. Repackager licensing requirement

(a) If Oklahoma is the state in which a prescription drug is repackaged or is the state from which or into which a prescription drug of a repackager is shipped, this prescription drug may not be repackaged and/or shipped into or out of Oklahoma unless each facility of such repackager is licensed in Oklahoma. Such license shall be renewed annually by application and payment of renewal fees.

(b) A repackager shall also be licensed as a repackager by the Secretary of the U.S. Department of Health and Human Services, Food and Drug Administration.

(c) A repackager license is only valid for the name, ownership and location listed on the license. Changes of name, ownership or location require a new repackager license.

(d) Changes in any information required for licensure must be reported to the Board, in writing, within ten (10) days (e.g. facility manager, designated representative, telephone number, etc.).

(e) When repackager operations are conducted at more than one location, each location shall be licensed by the Board.

(f) A repackager shall not operate from a place of residence.

(g) The repackaging facility shall be located apart and separate from any retail pharmacy licensed by the Board.

(h) A repackager must publicly display all licenses and have readily available the most recent state and/or federal inspection reports.

535:20-5-4. Minimum qualifications [REVOKED]

~~(a) *All packagers must conform to the federal Good Manufacturing Practices GMPA*, and/or any other applicable federal, state or local laws and regulations.~~

~~(b) The minimum qualifications for manufacturers shall be the same as those set forth in 535:25 and this Chapter for applicants and registrants.~~

~~(c) The Board shall consider, at a minimum, the following factors in reviewing the qualifications of persons who engage in manufacturing of drugs or devices:~~

~~(1) Any convictions of the applicant under any federal, state, or local laws relating to drug samples, packaging, wholesale or retail drug distribution, or distribution of controlled substances;~~

~~(2) Any felony convictions of the applicant under federal, state, or local laws;~~

~~(3) The applicant's past experience in the manufacture or distribution of drugs, including controlled substances;~~

~~(4) The furnishing by the applicant of false or fraudulent material in any application made in connection with drug or device manufacturing, or distribution;~~

~~(5) Suspension, sanction, or revocation by federal, state, or local government of any license currently or previously held by the applicant for the manufacture manufacturing, packaging or distribution of any drugs, including controlled substances; or by any of its owners for violation of state or federal laws regarding drugs or devices;~~

~~(6) Compliance with licensing requirements under previously granted licenses, if any;~~

~~(7) Compliance with requirements to maintain and/or make available to the State Board of Pharmacy or to federal, state, or local law enforcement officials those records required under this section; and,~~

~~(8) Any other factors or qualifications the Board considers relevant to and consistent with the public health and safety.~~

~~(d) The Board shall have the right to deny a license to an applicant if it determines that the granting of such a license would not be consistent with the public health and safety.~~

535:20-5-4.1. Minimum required information for licensure

(a) A repackager applicant must submit a satisfactorily completed Board-approved application together with the required fee.

(1) New applicants shall provide, at least, the following:

(A) Applicant's full name, all trade or business names used, full business address and telephone number;

(B) Type of ownership, e.g. individual, partnership, limited liability company or corporation;

(C) Name(s) of the owner(s) of the applicant, including:

(i) if a person, the name, address, Social Security number and date of birth;

(ii) if other than a person, the name, address, and Social Security number and date of birth of each partner, limited liability company member, or corporate officer and corporate director and the federal employer identification number;

(iii) if a corporation, the State of incorporation; and

(iv) if a publicly traded corporation, the information in (a)(1)(C)(ii) is not required for corporate officers and corporate directors.

(D) Names of designated representatives and facility managers of the applicant, their Social Security numbers and dates of birth;

(E) Evidence of criminal background checks and fingerprinting of the applicant, if a person, and of all of applicant's designated representatives and facility managers;

(F) Proof of licensure by the U.S. Secretary of Health and Human Services, Food and Drug Administration, and, if applicable, by the state where the applicant is located (home state); and,

(G) Upon the Board's written request, a list of all manufacturers, wholesale distributors, third-party logistics providers and dispensers for whom the repackager provides services at such facility.

(2) Renewal applicants shall provide those items listed above.

(3) Any other information the Board deems necessary to protect the public health and safety.

(b) The Board may use an outside agency, such as a National Association of Boards of Pharmacy, (NABP), at its discretion, to inspect repackagers.

535:20-5-4.2. Minimum qualifications

(a) The Board shall consider, at a minimum, the following factors in determining the eligibility for and renewal of licensure of repackagers:

(1) Any finding by a law enforcement agency or regulatory agency that the applicant or any of its owners have violated any federal, state, or local laws or foreign laws;

(2) Suspension, revocation or any other sanction against a license currently or previously held by the applicant or any of its owners for violations of state or federal laws;

(3) Any finding that the applicant or any of its owners are guilty of or pleaded guilty or nolo contendere to violating federal, state, or local criminal laws;

(4) The furnishing by the applicant of false or fraudulent material in any application;

(5) Failure to maintain and/or make available to the Board or to federal, state, or local law enforcement officials those records required to be maintained by repackagers;

(6) Any licensee who has no record of repackaging prescription drugs during routine inspection may have its subsequent renewal application referred to the Board for review and possible approval or disapproval, and such review may require the licensee to appear before the Board; and,

(7) Any other factors or qualifications that the Board considers relevant to and consistent with the public health and safety.

(b) A repackager shall have and follow diversion detection and prevention plan that includes all prescription drugs.

(c) The Board shall have the right to deny a license to an applicant if it determines that granting such a license would not be consistent with the public health and safety.

535:20-5-5. Personnel [REVOKED]

~~Personnel employed in packaging shall have sufficient education, training and/or experience to perform assigned functions and comply with federal, state and local licensing requirements.~~

535:20-5-5.1. Personnel

(a) Repackagers shall establish and maintain for Board inspection a list of each partner, limited liability company member or corporate officer and corporate director, as well as designated representatives and facility managers, including a description of their duties and a summary of their qualifications.

(b) Each repackager shall designate, in writing on a Board-approved form, a person to serve as the designated facility manager of the repackager for each location licensed. The facility manager is responsible for all aspects of the operation of the repackager.

(c) No repackager shall have as an owner, designated representative or facility manager anyone convicted of any felony for conduct relating to repackaging prescription drugs, any felony for violation of 21 U.S.C. § 331(i) or (k) or any felony for violation of 18 U.S.C. § 1365 relating to product tampering. No repackager shall have as an owner, designated representative or facility manager anyone who has violated federal or state requirements for licensure that presents a threat of serious adverse health consequences or death to humans.

535:20-5-6. Minimum requirements for storage, handling, maintenance and records [REVOKED]

~~The following decimal sections shall describe the minimum requirements for the storage and handing of drugs, and for the establishment and maintenance of drug records by packagers and their officers, agents, representatives, and employees.~~

535:20-5-6.1. Facility requirements [REVOKED]

~~(a) All packagers of drugs shall conform to U. S. Food and Drug Administration (FDA) Current Good Manufacturing Practice Regulations (CGMP).~~

~~(b) All packagers shall conform to the Oklahoma Pharmacy Act and the rules of this Title.~~

~~(c) Each facility at which drugs are packaged, stored, warehoused, handled, held, offered, marketed, or displayed shall:~~

~~(1) Be licensed by the Board;~~

~~(2) Be of suitable size and construction to facilitate cleaning, maintenance, and proper operations;~~

~~(3) Have storage areas designed to provide adequate lighting, ventilation, temperature, sanitation, humidity, space, equipment and security conditions;~~

~~(4) Have a quarantine area for storage of drugs that are outdated, damaged, deteriorated, misbranded, or adulterated, or that are in immediate or sealed, secondary containers that have been opened;~~

~~(5) Be maintained in a clean and orderly condition; and,~~

~~(6) Be free from infestation by insects, rodents, birds, or vermin of any kind.~~

535:20-5-6.2. Multiple Licensing [REVOKED]

~~(a) A packager facility shall not be in a facility where a retail pharmacy is located.~~

~~(b) The packager facility shall be located apart and separate from any retail pharmacy, licensed by the Board of Pharmacy, as set forth in this Title and 535:25-3-5.~~

535:20-5-6.3. Security [REVOKED]

~~(a) Each facility used for packaging shall be secure from unauthorized entry.~~

~~(1) Access from outside the premises shall be kept to a minimum and be well controlled.~~

~~(2) The outside perimeter of the premises shall be well-lighted.~~

~~(3) Entry into areas where drugs are held shall be limited to authorized personnel.~~

~~(b) All facilities shall be equipped with an alarm system to detect entry after hours.~~

~~(c) All packagers shall establish and maintain controls and systems that protect against, detect, and document any instances of theft, diversion, or counterfeiting. When appropriate, the security system shall provide protection against theft or diversion that is facilitated or hidden by tampering with computers or electronic records.~~

~~(d) All packagers shall establish and maintain a suspicious order monitoring program for controlled substances and dangerous drugs with a high likelihood of abuse:~~

~~(1) The packager must not ship the customer's order if the order is confirmed as suspicious; and,~~

~~(2) Each packager shall notify the Board, within ten (10) days, if an order is confirmed as suspicious.~~

535:20-5-6.4. Storage [REVOKED]

~~All drugs shall be stored at appropriate temperatures and under appropriate conditions in accordance with requirements, if any, in the labeling of such drugs, or with the requirements in the current edition of an official compendium, such as the United States Pharmacopeia/National Formulary (USP/NF).~~

~~(1) If no storage requirements are established for a drug, the drug may be held at "controlled" room temperature, as defined in an official compendium, to help ensure that its identity, strength, quality, and purity are not adversely affected.~~

~~(2) Appropriate manual, electromechanical, or electronic temperature and humidity recording equipment, devices, and/or logs shall be utilized to document proper storage of drugs.~~

~~(3) The recordkeeping requirement in this Title for manufacturers shall be followed for all stored drugs.~~

535:20-5-6.5. Examination of materials [REVOKED]

~~(a) Upon receipt, each outside shipping container shall be visually examined for identity and to prevent the acceptance of contaminated drugs or chemicals that are unfit. This examination shall be adequate to reveal container damage that would suggest possible contamination or other damage to the contents.~~

~~(b) Each outgoing shipment shall be carefully inspected for identity of the drug products and to ensure that there is no delivery of drugs that have been damaged in storage or held under improper conditions.~~

~~(c) The recordkeeping requirement in this Title for manufacturers shall be followed for all incoming and outgoing drugs.~~

535:20-5-6.6. Returned, damaged, and outdated drugs [REVOKED]

~~(a) Drugs that are outdated, damaged, deteriorated, misbranded, or adulterated shall be quarantined and physically separated from other drugs until they are destroyed.~~

~~(b) If the conditions under which a drug has been returned cast doubt on the drug's safety, identity, strength, quality or purity, then the drug shall be destroyed, unless examination, testing, or other investigation proves that the drug meets appropriate standards of safety, identity, quality, strength, and purity. In determining whether the conditions under which a drug has been returned cast doubt on the drug's safety, identity, strength, quality or purity, the packager shall consider, among other things:~~

~~(1) The conditions under which the drug has been held, stored or shipped before or during its return; and,~~

~~(2) The condition of the drug and its container, carton, or labeling, as a result of storage or shipping.~~

~~(c) The recordkeeping requirements for packagers in this Chapter shall be followed for all outdated, damaged, deteriorated, misbranded or adulterated drugs.~~

535:20-5-6.7. Recordkeeping [REVOKED]

~~(a) Packagers shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of drugs.~~

~~(b) Inventories and records shall be made available for inspection and photocopying by authorized federal, state, or local law enforcement agency officials for a period of two (2) years following disposition of the drugs.~~

~~(c) Records described in this section that are kept at the inspection site or that can be immediately retrieved by computer or other electronic means shall be readily available for authorized inspection during the retention period. Records kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within two (2) working days of a request by an authorized official of a federal, state, or local law enforcement agency.~~

~~(d) Each packager should maintain an ongoing list of persons with whom they do business.~~

535:20-5-6.8. Written policies and procedures [REVOKED]

~~(a) Packagers shall establish, maintain, and adhere to written policies and procedures, which shall be followed for the receipt, security, storage, inventory, and distribution of drugs, including policies and procedures for identifying, recording, and reporting losses or thefts, and for correcting all errors and inaccuracies in inventories.~~

~~(b) Packagers shall include in their written policies and procedures the following:~~

~~(1) A procedure to be followed for handling recalls and withdrawals of drugs. Such procedure shall be adequate to deal with recalls and withdrawals due to any:~~

~~(A) Action initiated at the request of the Food and Drug Administration (FDA) or other federal, state, or local law enforcement or other government agency, including the Board of Pharmacy;~~

~~(B) Voluntary action by the manufacturer to remove defective or potentially defective drugs from the market; or~~

~~(C) Action undertaken to promote public health and safety by replacing of existing merchandise with an improved product or new package design.~~

~~(2) A procedure to ensure that manufacturers prepare for, protect against, and handle a crisis that affects security or operation of any facility in the event of strike, fire, flood, or other natural disaster, or other situations of local, state or national emergency.~~

~~(3) A procedure to ensure that any outdated drugs shall be segregated from other drugs and destroyed.~~

~~(A) This procedure shall provide for written documentation of the disposition of outdated drugs.~~

~~(B) This documentation shall be maintained for two (2) years after disposition of the outdated drugs.~~

535:20-5-6.9. Responsible persons [REVOKED]

~~Packagers shall establish and maintain lists of officers, directors, managers and other persons in charge of drug manufacturer, distribution, storage, and handling, including a description of their duties and a summary of their qualifications.~~

535:20-5-6.10. Compliance with federal, state and local laws

(a) A repackager ~~Packager~~ shall operate in compliance with ~~applicable federal, state, and local laws and regulations.~~the Federal Food, Drug, and Cosmetic Act Good Manufacturing Practices, 21 U.S.C. §§ 321, 351, 352, 355, 360b, 371, 374; 42 U.S.C. §§ 216, 262, 263a, 264; and 21 C.F.R. Parts 210 and 211.

(b) A repackager shall operate in compliance with all applicable federal, state, and local laws and regulations, including, but not limited to, the Drug Quality and Security Act of 2013 and rules promulgated thereunder and the Act, 59 O.S. Section 353, et seq. and the Board's Rules, OAC 535.

~~(b) Packagers~~

(c) A repackager shall ~~permit~~ allow the Board ~~of Pharmacy~~ and authorized federal, state, and local law enforcement officials to enter and inspect its ~~their~~ premises and delivery vehicles, to audit its records and written operating procedures, and to confiscate prescription drugs and records to the extent authorized by law or rules. ~~(c) Packagers that deal in controlled substances shall register with the appropriate state controlled substance authority and with the Drug Enforcement Administration (DEA), and shall comply with all applicable state, local and DEA regulations.~~

(d) A repackager shall ship only to the address listed on the licensee's license.

535:20-5-6.11. Salvaging and reprocessing [REVOKED]

~~Packagers shall be subject to the provisions of any applicable federal, state or local laws or regulations that relate to drug product salvaging or reprocessing including U.S. 21 CFR Parts 207, 210 and 211.~~

535:20-5-8. Violations and Penalties [REVOKED]

~~(a) Penalties for violations of this Subchapter and of federal, state and local laws and regulations are listed in Title 59, Oklahoma Statutes, Section 353, et seq.~~

~~(b) Rules of conduct, violations of the rules of conduct and other requirements of packagers and all applicants can be found in this Title and in 535:25.~~

535:20-5-9. Prohibited conduct

(a) The following shall be considered prohibited conduct and be a violation of these rules: Failure to follow all applicable requirements of state and federal statutes and regulations,

including, but not limited to, the Drug Quality and Security Act of 2013 and rules promulgated thereunder, the Act, 59 O.S. Section 353, et seq. and the Board's rules, OAC 535.

~~(1) Engaging in the packaging and/or distribution of drugs~~

~~(A) with intent to defraud or deceive, failing to maintain or provide a complete and accurate record, when required;~~

~~(B) destroying, altering, concealing, or failing to maintain complete and accurate records for any drug packaging, when required;~~

~~(C) knowingly purchasing or receiving drugs from a person, not authorized to distribute drugs, or,~~

~~(D) selling, bartering, brokering, or transferring drugs to a person not authorized to purchase drugs, under the jurisdiction in which the person receives the drug(s).~~

~~(2) Forging, counterfeiting, or falsely creating any label for a drug(s) or who falsely represents any factual matter contained in any label of a drug(s).~~

~~(3) Altering, mutilating, destroying, obliterating, or removing the whole or any part of the labeling of a drug or the commission of any other act with respect to a drug which results in the drug being misbranded.~~

~~(4) Packaging, purchasing, selling, delivering or bringing into the state contraband drug(s), or any one who illegally possesses any amount of contraband drug(s); or,~~

(b) Any violation of the rules of registrant conduct in 535:25-9 is prohibited conduct.

535:20-5-10. Violations and Penalties

(a) Penalties for violations of this Subchapter and of federal, state and local laws and regulations are listed in 59 O.S. Section 353, et seq.

(b) Rules of conduct, violations of the rules of conduct and other requirements of applicants can be found in 535:25.

SUBCHAPTER 6. OUTSOURCING FACILITIES

535:20-6-1. Purpose

(a) The rules in this Subchapter set out the minimum requirements for licensure as an outsourcing facility.

(b) The rules in this Subchapter are to implement the Federal Food, Drug, and Cosmetic Act, as amended by the Drug Quality and Security Act of 2013, other applicable federal statutes and rules and the Act, 59 O.S. Section 353 et seq. and the Board's Rules, OAC 535.

535:20-6-2. Definitions

The definitions of words or terms defined in 59 O.S. Section 353.1 are incorporated herein and these words and terms shall have the same meaning when used in this Subchapter as defined in these statutes, unless the context clearly indicates otherwise.

535:20-6-3. Outsourcing facility licensing requirement

(a) If Oklahoma is the state in which a prescription drug is compounded or is the state from which or into which a prescription drug of an outsourcing facility is shipped, this prescription drug may not be compounded in and/or shipped into or out of Oklahoma unless each facility of such outsourcing facility is licensed in Oklahoma. Such license shall be renewed annually by application and payment of renewal fees.

(b) An outsourcing facility shall also be licensed as an outsourcing facility by the Secretary of the U. S. Department of Health and Human Services, Food and Drug Administration.

(c) An outsourcing facility license is only valid for the name, ownership and location listed on the license. Changes of name, ownership or location require a new outsourcing facility license.

(d) Changes in any information required for licensure must be reported to the Board, in writing, within ten (10) days (e.g. facility manager, designated representative, telephone number, etc.).

(e) When outsourcing facility operations are conducted at more than one location, each location shall be licensed by the Board.

(f) An outsourcing facility shall not operate from a place of residence.

(g) The outsourcing facility may be located in a facility where a retail pharmacy licensed by the Board is located.

(h) An outsourcing facility which receives patient specific prescriptions and fills the prescriptions in Oklahoma or ships the filled prescriptions into Oklahoma shall also have an Oklahoma pharmacy or non-resident pharmacy license.

(i) An outsourcing facility must publicly display all licenses and have readily available the most recent state and/or federal inspection reports.

535:20-6-4. Minimum required information for licensure

(a) An outsourcing facility applicant must submit a satisfactorily completed Board-approved application together with the required fee.

(1) New applicants shall provide, at least, the following:

(A) Applicant's full name, all trade or business names used, full business address, telephone number and unique facility identifier;

(B) Type of ownership, e.g. individual, partnership, limited liability company or corporation;

(C) Name(s) of the owner(s) of the applicant, including:

(i) if a person, the name, address, Social Security number and date of birth;

(ii) if other than a person, the name, address, and Social Security number and date of birth of each partner, limited liability company member, or corporate officer and corporate director and the federal employer identification number;

(iii) if a corporation, the State of incorporation; and

(iv) if a publicly traded corporation, the information in (a)(1)(C)(ii) is not required for corporate officers and corporate directors.

(D) Names of designated representatives, facility managers, and, if applicable, pharmacist-in-charge of the applicant, their Social Security numbers and dates of birth;

(E) Evidence of criminal background checks and fingerprinting of the applicant, if a person, and of all of applicant's designated representatives and facility managers;

(F) Proof of licensure by the U.S. Secretary of Health and Human Services, Food and Drug Administration, and, if applicable, by the state where the applicant is located (home state); and

(G) Upon the Board's written request, a list of all dispensers for whom the outsourcing facility provides services at such facility.

(2) Renewal applicants shall provide those items listed above.

(3) Any other information the Board deems necessary to protect the public health and safety.

(b) The Board may use an outside agency, such as a National Association of Boards of Pharmacy (NABP), at its discretion, to inspect outsourcing facilities.

535:20-6-5. Minimum qualifications

(a) The Board shall consider, at a minimum, the following factors in determining the eligibility for and renewal of licensure of outsourcing facilities:

(1) Any finding by a law enforcement agency or regulatory agency that the applicant or any of its owners have violated any federal, state, or local laws or foreign laws;

(2) Suspension, revocation or any other sanction against a license currently or previously held by the applicant or any of its owners for violations of state or federal laws;

(3) Any finding that the applicant or any of its owners are guilty of or pleaded guilty or nolo contendere to violating federal, state, or local criminal laws;

(4) The furnishing by the applicant of false or fraudulent material in any application;

(5) Failure to maintain and/or make available to the Board or to federal, state, or local law enforcement officials those records required to be maintained by outsourcing facilities;

(6) Any licensee who has no record of compounding prescription drugs during routine inspection may have its subsequent renewal application referred to the Board for review and possible approval or disapproval, and such review may require the licensee to appear before the Board; and

(7) Any other factors or qualifications that the Board considers relevant to and consistent with the public health and safety.

(b) An outsourcing facility shall have and follow a diversion detection and prevention plan that includes all prescription drugs.

(c) The Board shall have the right to deny a license to an applicant if it determines that granting such a license would not be consistent with the public health and safety.

535:20-6-6. Personnel

(a) Outsourcing facilities shall establish and maintain for Board inspection a list of each partner, limited liability company member or corporate officer and corporate director, as well as designated representatives and facility managers, including a description of their duties and a summary of their qualifications.

(b) Each outsourcing facility shall designate, in writing on a Board-approved form, a person to serve as the designated facility manager of the outsourcing facility for each location licensed.

(c) Each outsourcing facility shall designate, in writing on a Board-approved form, a person to serve as the pharmacist-in-charge who is a pharmacist licensed by the Board.

(d) No outsourcing facility shall have as an owner, designated representative, facility manager, or pharmacist-in-charge anyone convicted of any felony for conduct relating to compounding prescription drugs, any felony for violation of 21 U.S.C. § 331(i) or (k) or any felony for violation of 18 U.S.C. § 1365 relating to product tampering. No outsourcing facility shall have as an owner, designated representative, facility manager or pharmacist-in-charge anyone who has violated federal or state requirements for licensure that presents a threat of serious adverse health consequences or death to humans.

535:20-6-7. Compliance with federal, state and local laws

(a) An outsourcing facility shall operate in compliance with the Federal Food, Drug, and Cosmetic Act Good Manufacturing Practices, 21 U.S.C. §§ 321, 351, 352, 355, 360b, 371, 374; 42 U.S.C. §§ 216, 262, 263a, 264; and 21 C.F.R. Parts 210 and 211: and meet the requirements of Current Good Manufacturing Practice - Interim Guidance for Human Drug Compounding Outsourcing Facilities under Section 503B of the FD&C Act or any revision to the document as finalized.

(b) An outsourcing facility shall operate in compliance with all applicable federal, state, and local laws and regulations, including, but not limited to, the Drug Quality and Security Act of 2013 and rules promulgated thereunder and the Act, 59 O.S. Section 353, et seq. and the Board's Rules, OAC 535.

(c) An outsourcing facility shall allow the Board and authorized federal, state, and local law enforcement officials to enter and inspect its premises and delivery vehicles, to audit its records and written operating procedures, and to confiscate prescription drugs and records to the extent authorized by law or rules.

(d) When shipping to licensees, an outsourcing facility shall ship only to the address listed on the licensee's license.

535:20-6-8. Prohibited conduct

The following shall be considered prohibited conduct and be a violation of these rules: Failure to follow all applicable

requirements of state and federal statutes and regulations, including, but not limited to, the Drug Quality and Security Act of 2013 and rules promulgated thereunder, the Act, 59 O.S. Section 353, et seq. and the Board's rules, OAC 535.

535:20-6-9. Violations and penalties

(a) Penalties for violations of this Subchapter and of federal, state and local laws and regulations are listed in 59 O.S. Section 353, et seq.

(b) Rules of conduct, violations of the rules of conduct and other requirements of all applicants can be found in 535:25.

SUBCHAPTER 7. ~~WHOLESALERS~~WHOLESALE DISTRIBUTOR ~~AND PEDIGREE~~ RULES

535:20-7-1. Purpose

(a) The rules in this Subchapter set out the minimum requirements for licensure as a wholesaler distributor. ~~standards, terms, and conditions for persons who must license before engaging in wholesale distributions in interstate and/or intrastate commerce of Rx Only (prescription) drugs, and implement the Prescription Drug Marketing Act of 1987~~.

(b) The rules in this Subchapter are to implement the Federal Food, Drug, and Cosmetic Act, as amended by the Drug Supply Chain Security Act of 2013, 21 U.S.C. § 360eee, et seq., 21 C.F.R. Part 205, other applicable federal statutes and rules and the Act, 59 O.S. Section 353 et seq. and the Board's Rules, OAC 535. ~~requirements authorized in Title 59, Oklahoma Statutes Section 353.1 et seq.~~

~~(c) The rules in this Subchapter are to implement Title 59 O.S. Section 353.18 (D).~~

~~(d) The rules in this Subchapter establish a pedigree or electronic file for the purpose of ensuring the integrity of drugs owned, purchased, distributed, returned, transferred and sold.~~

535:20-7-2. Definitions

The definitions of words or terms defined in 59 O.S. Section 353.1 and 21 U.S.C. § 360eee are incorporated herein and these words and terms shall have the same meaning when used in this Subchapter as defined in these statutes, unless the context clearly indicates otherwise.~~The following words or terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:~~

~~"**Adulterated**" means a drug which shall be deemed to be adulterated if it meets the federal Food and Drug Administration (FDA)'s definition of adulterated. Or:~~

~~(A) If it consists in whole or in part of any filthy, putrid, or decomposed substance; or~~

~~(B) If:~~

~~(i) it has been produced, prepared, packed, or held under unsanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health; or~~

~~(ii) if the methods used in, or the facilities or controls used for, its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with current good manufacturing practice to assure that the drug meets the requirements of this part as to safety and has the identity and strength, and meets the quality and purity characteristics which it purports or is represented to possess; or~~

~~(C) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or~~

~~(D) If:~~

~~(i) it bears or contains, for purposes of coloring only, a color additive which is unsafe within the meaning of the Federal FDA Act; or~~

~~(ii) it is a color additive, the intended use of which is for purposes of coloring only, and is unsafe within the meaning of the Federal FDA Act;~~

~~(E) If it purports to be or is represented as a drug the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below, the standard set forth in the compendium. Such a determination as to strength, quality, or purity shall be made in accordance with the tests or methods of assay set forth in the compendium, or in the absence of or inadequacy of these tests or methods of assay, those prescribed under authority of the Federal FDA Act. No drug defined in an official compendium shall be deemed to be adulterated under this paragraph because it differs from the standard of strength, quality, or purity therefore set forth in the compendium, if its difference in strength, quality, or purity from that standard is plainly stated on its label; or~~

~~(F) If it is not subject to subparagraph (E) and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess; or~~

~~(G) If it is a drug and any substance has been (A) mixed or packed therewith so as to reduce its quality or strength; or (B) substituted wholly or in part therefore.~~

~~"**Authenticate**" means to affirmatively verify before any wholesale distribution of a drug occurs that each transaction listed has occurred.~~

~~"**Blood**" means whole blood collected from a single donor and processed either for transfusion or further manufacturing.~~

~~"**Blood component**" means that part of blood separated by physical or mechanical means.~~

~~"**Chain pharmacy warehouse**" means a central warehouse, licensed as a wholesaler, for prescription drugs that performs intra-company sales or intra-company transfers of such drugs to a group of chain pharmacies that have the same common ownership and control.~~

~~"**Co-licensee**" means a pharmaceutical manufacturer that has entered into an agreement with another pharmaceutical manufacturer to engage in a business activity or occupation related to the manufacture or distribution of a Prescription Drug.~~

~~"**Contraband drug**" means a drug which is counterfeit, stolen, misbranded, obtained by fraud, or purchased and/or~~

~~placed in commerce in violation of the federal Prescription Drug Marketing Act.~~

~~**"Counterfeit drug"** means a drug which, or the container, shipping container, seal, or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, or device, or any likeness thereof, of a manufacturer, processor, packer, or distributor other than the person or persons who in fact manufactured, processed, packed, or distributed such drug and which thereby falsely purports or is represented to be the product of, or to have been packed or distributed by, such other manufacturer, processor, packer, or distributor.~~

~~**"Drop shipment"** means the sale of a prescription drug to a wholesale distributor by the manufacturer of the prescription drug, or that manufacturer's co-licensee, that manufacturer's third party logistics provider, or that manufacturer's exclusive distributor, whereby the wholesaler distributor takes title but not physical possession of such prescription drug and the wholesaler distributor invoices the pharmacy or chain pharmacy warehouse, or other person authorized by law to dispense or administer such drug to a patient, and the pharmacy or chain pharmacy warehouse or other person authorized by law to dispense or administer such drug to a patient receives delivery of the prescription drug directly from the manufacturer, or that manufacturer's third party logistics provider, or that manufacturer's exclusive distributor, or that manufacturer's co-licensee.~~

~~**"Exclusive Distributor"** means a licensed wholesaler that contracts with a Manufacturer to provide or coordinate warehousing, wholesale distribution, or other services on behalf of a manufacturer and who takes title to that manufacturer's prescription drug, but who does not have general responsibility to direct the sale or disposition of the manufacturer's prescription drug.~~

~~**"Drug sample"** means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug.~~

~~**"Manufacturer"** means manufacturer as defined in Title 59 O.S. Section 353.1.~~

~~**"Misbranded"**: A drug shall be deemed to be misbranded if it meets the federal Food and Drug Administration (FDA)'s definition of misbranded, or if the label is false or misleading; or the label does not bear the name and address of the manufacturer, packer, and/or distributor as required and does not have an accurate statement of the quantities of the active ingredients; or does not show an accurate monograph for legend drugs; or other considerations as noted in the Federal Food, Drug and Cosmetic Act.~~

~~**"Normal distribution channel"** means a chain of custody or drop shipment for a prescription drug that goes from a manufacturer of the prescription drug, or from the manufacturer's co-licensee, or from the manufacturer's third party logistics provider, or from the manufacturer's exclusive distributor to a:~~

~~(A) pharmacy or other persons authorized by law to dispense or administer prescription drugs to a patient; or,~~

~~(B) wholesaler to a pharmacy or other persons authorized by law to dispense or administer prescription drugs to a patient; or,~~

~~(C) wholesaler to a chain pharmacy warehouse wholesaler to their intra-company pharmacy to a patient by prescription; or,~~

~~(D) chain pharmacy warehouse wholesaler to their intra-company pharmacy to a patient by prescription; or,~~

~~(E) wholesaler to a pharmacy buying cooperative warehouse wholesaler to a pharmacy that is a member owner of the buying cooperative to a patient by prescription; or,~~

~~(F) in limited situations where a documented product shortage, back-orders, or emergency exists, one wholesaler to one other wholesaler to a pharmacy or other persons authorized by law to dispense or administer prescription drugs to a patient.~~

~~**"Packager"** means packager as defined in Title 59 O.S. Section 353.1 and includes anyone packaging or repackaging drugs.~~

~~**"Pedigree"** means a document, written or electronic, that records each wholesale distribution of any given drug, from the sale by a manufacturer through acquisition and sale by any wholesale distributor, packager or repackager and includes the information for each transaction shown in 535:20-7-7.7 (b) recordkeeping, et seq.~~

~~**"Prescription Drug" or "Drug"** means any drug as defined in Title 59 O.S. Section 353.1(16) et seq. that is required by Federal law or regulation to be dispensed only by a prescription, including finished dosage forms and active ingredients subject to section 503(b) of the Federal Food, Drug, and Cosmetic Act.~~

~~**"Repackage"** means changing the container, quantity, or labeling of a drug to further the distribution of the drug and requires a packager license. Repackaging does not include the filling of a prescription by a pharmacy.~~

~~**"Wholesale distribution and wholesale distributions"** means distribution of prescription drugs to persons other than a consumer or patient, but does not include:~~

~~(A) Intracompany sales of prescription drugs, between any division, subsidiary, parent or affiliated or related company under common ownership and control, or any transaction or transfer between co-licensees of a co-licensed product;~~

~~(B) The purchase or other acquisition by a hospital or other health care entity that is a member of a group purchasing organization of a drug for its own use from the group purchasing organization or from other hospitals or health care entities that are members of such organizations;~~

~~(C) The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by a charitable organization described in section 501(c)(3) of the Internal Revenue Code of 1954 to a nonprofit affiliate of the organization to the extent otherwise permitted by law;~~

~~(D) The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug among hospitals or other health care entities that are under common control; for purposes of this section, "common control" means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, voting rights, by contract or otherwise;~~

~~(E) The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons; for purposes of this section "emergency medical reasons" includes transfers of prescription drug by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage;~~

~~(F) The sale, purchase, or trade of a drug, an offer to sell, purchase, or trade a drug, or the dispensing of a drug pursuant to a prescription;~~

~~(G) The distribution of drug samples by manufacturers' representatives or distributors' representatives; or~~

~~(H) The sale, purchase, or trade of blood and blood components intended for transfusion.~~

~~(I) The sale, transfer, merger or consolidation of all or part of the business of a licensed pharmacy or pharmacies from or with another licensed pharmacy or pharmacies, whether accomplished as a purchase and sale of stock or business assets.~~

~~(J) The delivery of, or offer to deliver, a prescription drug by a common carrier solely in the common carrier's usual course of business of transporting prescription drugs, and such common carrier does not store, warehouse, or take legal ownership of the prescription drug.~~

~~**"Wholesale distributor"** means anyone engaged in the wholesale distribution of prescription drugs, including, but not limited to, manufacturers; repackers; own label distributors; private label distributors; jobbers; brokers; warehouses, including manufacturers' and distributors' warehouses, chain pharmacy warehouses, and wholesale drug warehouses; and independent wholesale drug traders.~~

~~**"Wholesaler"** means **"Wholesaler or Distributor"** as defined in Oklahoma Statutes, Title 59, Section 353.1(15).~~

535:20-7-3. Wholesale ~~drug~~ distributor licensing requirement

(a) If Oklahoma is the state in which a prescription drug is distributed or is the state from which or into which a prescription drug is distributed by a wholesale distributor, that wholesale distributor may not distribute in or into or out of Oklahoma unless each facility of such wholesale distributor is licensed in Oklahoma. Such license shall be renewed annually by application and payment of renewal fees.

~~(a) Every wholesale distributor conducting interstate and/or intrastate transactions in Oklahoma must be licensed before engaging in wholesale distributions of drugs.~~

(b) If Oklahoma is the state into which a prescription drug is shipped by a wholesale distributor, that wholesale distributor shall also be licensed as a wholesale distributor by the state from which that wholesale distributor ships.

(~~b~~c) A wholesaler distributor license ~~permit~~ is only valid for the name, ownership and location listed on the license ~~permit~~. Changes of name, ownership or location ~~shall~~ require a new wholesale distributor license.~~wholesaler permit~~.

(~~c~~d) Changes in any information required for licensure must be reported to the Board, in writing, within ten (10) days (e.g. facility manager, designated representative, telephone number, ~~contact person, phone~~, etc.)

(e ~~d~~) ~~Each location shall possess a wholesaler permit.~~ When wholesale distributor ~~distribution~~ operations are conducted at more than one location, each location shall be licensed by the Board.

(f ~~e~~) A wholesale distributor ~~cannot~~ shall not operate from a place of residence.

~~(f) Every wholesale distributor who engages in the wholesale distribution of drugs and/or devices shall pay the annual fee and license annually with the Board by application and provide information required on a Board approved application. Minimum required information for licensure is in 535:20-7-4.~~

(g) The wholesale distributing facility shall be located apart and separate from any retail pharmacy licensed by the Board.

(h) A wholesale distributor ~~(g) Wholesale distributors~~ must publicly display all licenses and have readily available the most recent state and/or federal ~~Board~~ inspection reports ~~report~~.

535:20-7-4. Minimum required information for licensure

(a) A wholesale distributor applicant~~Minimum required information for licensure shall be that information as required by the FDA Adopted Guidelines for State licensing of Wholesale Prescription Drug Distributors, 21 CFR, Part 205.5(a) and the requirements of this section.~~

~~(b) All wholesaler applicants must meet the requirements under the Oklahoma Pharmacy Act, this Title and the rules in 535:25 for applicants.~~

~~(c) Wholesaler applicants~~ must submit a satisfactorily completed Board-approved application together with the required fee. ~~annually~~.

(1) New applicants ~~for both in- and out-of-state wholesalers (e.g.: wholesale distributors, chain pharmacy warehouses and repackagers) that ship into Oklahoma~~ shall ~~include~~provide at least, the following:

(A) Applicant's full name, ~~full business address,~~ all trade or business names used, full business address and telephone number;

(B) Type of ownership, e.g. individual, partnership or corporation;

(C) Name(s) of the owner(s) ~~and operator of the licensee (if not the same person),~~of the applicant including:

(i) if a person; the name, address, social security number and date of birth;

(ii) if other than a person; the name, address, and social security number and date of birth of each partner, limited liability company member, or corporate officer and corporate director, ~~or~~

~~limited liability company member,~~ and the federal employer identification number;

(iii) if a corporation, the State of incorporation; and,

(iv) if a publicly traded corporation, the information in ~~(c)(1)(C)(i) and (c)(1)(C)(ii)~~ (a)(1)(C)(ii) is ~~above are~~ not required for corporate officers and corporate directors. ~~A publicly traded corporation shall provide information regarding the operator of the licenses; and as required in (c)(1)(D) below the designated manager information.~~

(D) Names of designated representatives and facility managers of the applicant ~~(operators of the wholesaler applicant)~~, their Social Security numbers and date of birth;

(E) ~~Applicant's and designated managers' fingerprints,~~

~~(F)~~ Evidence of criminal background checks and fingerprinting of the applicant, if a person, and all of applicant's designated facility managers; ~~Criminal background check information for the applicants and designated managers as required by rule;~~

(F) Proof of licensure by the state where the applicant is located (home state) and, if applicable, by the U.S. Secretary of Health and Human Services, Food and Drug Administration;

(G) Submission of a ~~A~~ surety bond meeting the requirements of the Drug Supply Chain Security Act of 2013, et seq. and the rules promulgated thereunder; and, ~~of not less than $10,000, or if located in another state which requires a surety bond, documentation of such bond;~~

(H) Upon the Board's written request, a list of all manufacturers, wholesale distributors and dispensers for whom the wholesale distributor provides services at such facility.~~A copy of the license from the resident (home) state where the wholesaler is located; and,~~

(2) Renewal applicants shall provide those items listed above. ~~Renewal applications for both in- and out-of-state wholesale distributors, chain pharmacy warehouses and repackagers that ship into Oklahoma shall include those things listed in 535:20-7-4. If such has previously been provided to the Board and has not changed then the applicant can use a Board renewal application.~~

(3) Any other information the Board deems necessary to protect the public health and safety.

(b ~~d~~) The Board may use an outside agency, such as the National Association of Boards of Pharmacy (NABP) program, at its discretion, to inspect wholesale distributors.~~Verified Accredited Wholesale Distributors (VAWD), to accredit wholesale distributors and repackagers. The Board may exempt wholesalers accredited by VAWD from some provisions of Subparagraphs (c) (1) of this section.~~

~~(e) Logistics providers that receive prescription drugs from original sponsors or manufacturers, deliver the drug products in commerce at the direction of the original sponsor or manufacturer, and do not purchase, sell, trade, or take title to any prescription drug are exempt from the provisions in (c) (1) of this section.~~

535:20-7-5. Minimum qualifications

(a) The Board shall consider, at a minimum, the following factors in determining the eligibility for~~,~~ and renewal of licensure of ~~persons who engage in~~ wholesale distributors~~distribution of drugs or devices~~:

(1) Any findings by a law enforcement or regulatory agency ~~the Board~~ that the applicant or any of its owners have~~has~~ violated ~~or been disciplined by a regulatory agency in any state for violating~~ any federal, state, or local laws ~~relating to drug distribution~~;

(2) Suspension, revocation or any other sanction against a licensee currently or previously held by the applicant or any of its owners for violations of state or federal laws;~~Any criminal convictions of~~

(3) Any finding that the applicant or any of its owners is guilty of or pleaded nolo contendere to violating ~~under~~ federal, state, or local laws;

(~~3~~4) The furnishing by the applicant of false or fraudulent material in any application; ~~made in connection with drug or device manufacturing or distribution;~~

~~(4) Suspension, sanction, or revocation by federal, state, or local government against any license currently or previously held by the applicant or any of its owners for violations of state or federal laws regarding drugs or devices;~~

(5) ~~Compliance with licensing requirements under previously granted licenses;~~

~~(6)~~ Failure ~~Compliance with requirements~~ to maintain and/or make available to the Board or to federal, state, or local law enforcement officials those records required to be maintained by wholesale drug distributors;

(6 ~~7~~) Any licensee ~~registrant~~ who has no record of providing wholesaler distributions during routine inspection may have its ~~their~~ subsequent renewal application referred to the Board for review and possible approval or disapproval, and such review may require registrant appearance before the Board; and,

(~~8~~7) Any other factors or qualifications the Board considers relevant to and consistent with the public health and safety.

(b) A wholesale distributor shall have and follow a diversion detection and prevention plan that includes all prescription drugs.

(c) The Board shall have the right to deny a license to an applicant if it determines that the granting of such a license would not be consistent with the public health and safety.

535:20-7-6. Personnel

~~(a) Personnel employed in wholesale distribution shall have education, training and/or experience sufficient so that they may perform assigned functions related to compliance with state licensing requirements.~~

~~(b) The Board shall as required in 353.18(B), at a minimum, consider those qualifications listed in 535:20-7-5 for personnel employed in wholesale distribution.~~

(a ~~c~~) Wholesale ~~drug~~ distributors shall establish and maintain for Board inspection a list~~lists~~ of each partner, corporate officer and corporate director or limited liability company member and facilty manager, ~~officers, directors, managers and other persons in charge of wholesale drug distribution, storage, and handling,~~ including a description of their duties and a summary of their qualifications.~~Also known as responsible persons list.~~

(~~d~~b) Each ~~person issued a wholesaler license, initial or renewal, whether in or out of state, must~~wholesale distributor shall designate, in writing~~,~~ on a Board-approved form.~~required by the Board~~ a person to serve as the ~~designated~~ facility manager of the wholesale distributor for each location licensed. The facility manager is responsible for all aspects of the operation of the wholesale distributor.

(c) No wholesale distributor shall have as an owner, designated representative or facility manager anyone convicted of any felony for conduct relating to providing wholesale distribution of prescription drugs, any felony for violating 21 U.S.C. Section 331(i) or (k) or any felony for violation of 18 U.S.C. Section 1365 relating to product tampering. No wholesale distributor shall have as an owner, designated representative or facility manager anyone who has violated federal or state requirement for licensure that presents a threat of serious adverse health consequences or death to humans.

535:20-7-7. Minimum requirements for the storage, handling, transport, and shipment of drugs and/or devices and establishment and maintenance of drug records [REVOKED]

~~The following describe the requirements for the storage, handling, transport and shipment of drugs or devices, and for the establishment and maintenance of wholesale distribution records, and requirement for wholesale distributor's officers, agents, representatives, and employees~~

535:20-7-7.1. Facility requirements [REVOKED]

~~(a) All wholesalers of prescription drugs shall conform the Prescription Drug Marketing Act of 1988 (21 USC 363) and applicable rules for the storage and handling of prescription drugs.~~

~~(b) All wholesalers of prescription drugs shall conform to the Oklahoma Pharmacy Act and the rules of this Title, and be licensed by the Board.~~

~~(c) All facilities at which drugs are received, stored, warehoused, handled, held, offered, marketed, displayed, or transported from shall:~~

~~(1) be of suitable construction to ensure that all drugs and devices in the facilities are maintained in accordance with labeling of such drugs, or in compliance with official compendium standards such as USP/NF;~~

~~(2) be of suitable size and construction to facilitate cleaning, maintenance, and proper wholesale distribution operations;~~

~~(3) have adequate storage areas designed to provide adequate lighting, ventilation, temperature, sanitation, humidity, space, equipment and security conditions;~~

~~(4) have a quarantine area for storage of prescription drugs that are outdated, damaged, deteriorated, misbranded, adulterated, counterfeit, or suspected of being counterfeit, otherwise unfit for distribution, or that are in immediate or sealed, secondary containers that have been opened;~~

~~(5) be maintained in a clean and orderly condition; and,~~

~~(6) be free from infestation of any kind.~~

~~(d) Each wholesaler shall be in a commercial location and not a personal dwelling or residence.~~

~~(e) Wholesale distributors involved in the distribution of controlled substances shall be duly registered with the Drug Enforcement Administration (DEA) and the Oklahoma Bureau of Narcotics, if required, and shall be in compliance with all applicable laws and rules for the storage, handling, transport, shipment and distribution of controlled substances.~~

535:20-7-7.2. Multiple Licensing [REVOKED]

~~(a) A wholesale facility shall not be located in a facility where a retail pharmacy is located.~~

~~(b) The wholesale facility shall be located apart and separate from any retail pharmacy, licensed by the Board of Pharmacy, as set forth in this Title and 535:25-3-5.~~

535:20-7-7.3. Security and anti-counterfeiting [REVOKED]

~~(a) All facilities used for wholesale drug distribution shall be secure from unauthorized entry.~~

~~(1) Access from outside the premises shall be kept to a minimum and be well controlled.~~

~~(2) Entry into areas where prescription drugs are held shall be limited to authorized personnel.~~

~~(b) All facilities shall be equipped with an alarm system to detect entry after hours.~~

~~(c) All facilities shall establish and maintain controls and systems that protect against, detect, and document any instances of theft, diversion, or counterfeiting. When appropriate, the security system shall provide protection against theft or diversion that is facilitated or hidden by tampering with computers or electronic records.~~

~~(d) All wholesalers shall establish and maintain a suspicious order monitoring program for controlled substances and dangerous drugs with a high likelihood of abuse:~~

~~(1) The wholesaler must not ship the customer's order if the order is confirmed as suspicious;~~

~~(2) Each wholesaler shall notify the Board, within ten (10) days, if an order is confirmed as suspicious; and,~~

~~(3) Wholesalers shall establish guidelines and procedures for identifying dangerous drugs with a high likelihood of abuse and suspicious orders.~~

~~(e) If a wholesaler has reason to believe, based on the totality of the facts and circumstance, that any drug purchased is counterfeit, suspected of being counterfeit, misbranded, or~~

~~adulterated, the purchasing wholesaler must authenticate the pedigree.~~

535:20-7-7.4. Storage [REVOKED]

~~All prescription drugs shall be stored at appropriate temperatures and under appropriate conditions in accordance with requirements, if any, in the labeling of such drugs, or with the requirements in the current edition of an official compendium, such as the United States Pharmacopeia/National Formulary (USP/NF).~~

~~(1) If no storage requirements are established for a drug, the drug may be held at "controlled" room temperature, as defined in an official compendium such as USP/NF, to help ensure that its identity, strength, quality, and purity are not adversely affected.~~

~~(2) Appropriate manual, electromechanical, or electronic temperature and humidity recording equipment, devices, and/or logs shall be utilized to document proper storage of drugs.~~

~~(3) Packaging of the drugs should be in accordance with an official compendium such as USP/NF and identify any compromise in the integrity of the drugs due to tampering or adverse storage conditions.~~

~~(4) Controlled dangerous substance (CDS) drugs should be isolated from non-CDS drugs and stored in a secure area in accordance with federal and state CDS security requirements and standards.~~

535:20-7-7.5. Examination of materials [REVOKED]

~~(a) Upon receipt, each shipping container shall be visually examined for identity and to prevent the acceptance of contaminated drugs that are otherwise unfit for distribution. This examination shall be adequate to reveal container damage that would suggest possible contamination, adulteration, misbranding, counterfeiting or suspected of being counterfeit, or other damage to the contents.~~

~~(b) The drugs found to be unacceptable under paragraph (a) should be quarantined from the rest of stock until the drugs are determined to be fit for human use.~~

~~(c) Each outgoing shipment shall be carefully inspected for identity of the drugs and to ensure that there is no delivery of drugs that have been damaged in storage or held under improper conditions.~~

~~(d) The recordkeeping requirement in this Title for wholesale drug distributors shall be followed for all incoming and outgoing prescription drugs.~~

535:20-7-7.6. Drug returns, and returned, damaged, and outdated drugs [REVOKED]

~~(a) Wholesale distributors shall receive prescription drug returns or exchanges from a pharmacy, chain pharmacy warehouse, or other persons authorized by law to administer and dispense such drugs, pursuant to the terms and conditions of the agreement between the wholesale distributor and the pharmacy, chain pharmacy warehouse or other persons authorized by law to administer and dispense such drugs including the returns of expired, damaged, and recalled pharmaceutical product to either the manufacturer, the wholesaler, or a third party returns processor, and such returns shall not be subject to the pedigree requirement.~~

~~(b) If, the returns described in (a) appear to be a suspicious, unusual or excessive quantity of drugs, such wholesale distributor shall report such returns to the Board.~~

~~(c) Wholesale distributors shall be held accountable for administering their return process and ensuring that the aspects of this operation are secure, and do not permit the entry of adulterated, misbranded, and/or counterfeit drugs.~~

~~(d) Any drug returned to a manufacturer or wholesale distributor shall be kept under proper conditions for storage, handling, transport, and shipment.~~

~~(e) When drugs are adulterated, misbranded, counterfeited, or suspected of being counterfeit, notice shall be provided to the Board, FDA and manufacturer or wholesale distributor from which it was acquired within three (3) business days.~~

~~(f) Contraband, counterfeit, or suspected to be counterfeit drugs, other evidence of criminal activity, and accompanying documentation shall be retained and not destroyed until its disposition is authorized by the Board and/or FDA.~~

~~(g) If the conditions under which a prescription drug has been returned cast doubt on the drug's safety, identity, strength, quality or purity, then the drug shall be destroyed or returned to the supplier, unless examination, testing, or other investigation proves that the drug meets appropriate standards of safety, identity, quality, strength, and purity.~~

~~(h) Salvaging and reprocessing. Wholesale drug distributors shall be subject to the provisions of any applicable federal, state or local laws or regulations that relate to prescription drug product salvaging or reprocessing including U.S. 21 CFR Parts 207, 210 and 211.~~

~~(i) The recordkeeping requirements for wholesale prescription drug distributors in 535:20-7-7.7 shall be followed for all outdated, damaged, deteriorated, misbranded or adulterated prescription drugs.~~

535:20-7-7.7. Recordkeeping; including pedigree requirement [REVOKED]

~~(a) Wholesale distributors shall establish and maintain complete inventories and records of all transactions regarding the receipt and distribution or other disposition of drugs and devices.~~

~~(b) After January 1, 2011, each person who is engaged in wholesale distribution of prescription drugs, (including repackagers of the finished form of the prescription drug) whether located in or out of state, must maintain and provide a pedigree record developed in accordance with standards and requirements of the Board, for all drugs received, distributed, sold and/or offered for sale outside of the normal distribution channel, or that leave or have ever left the normal distribution channel and shall before each wholesale distribution of such drug provide a pedigree to the person who receives such prescription drug.~~

~~(1) A statement or record in written or electronic form shall be used to record each distribution of any given~~

~~drug, from the sale by a manufacturer through acquisition and sale by any wholesaler distributor, packager and/or repackager.~~

~~(2) The pedigree shall include, but not be limited to, the following information for each transaction:~~

~~(A) The source of the drug(s), including the name and principal address of the seller;~~

~~(B) The name of the drug and the national drug code (NDC) number, the amount of the drug, the date of the purchase, quantity (container size, number of containers), and lot number(s) of the drug;~~

~~(C) The business name and address of each owner of the drug, its shipping information, including the name and address of the facility of each person certifying delivery or receipt of the drug;~~

~~(D) A certification that the information contained therein is true and accurate under penalty of perjury.~~

~~(3) The wholesale distributor must conduct due diligence in verifying pedigrees.~~

~~(4) The pedigree or electronic record requirements do not apply to compressedmedical gases (medical gas suppliers and medical gas distributors, etc.)~~

~~(5) The pedigree or electronic record requirements do not apply to drugs labeled for veterinarian use.~~

~~(c) Wholesale distributors shall establish and maintain inventories and records of all transactions regarding the receipt and distribution, or other disposition of all drugs and devices. Such records shall include the dates of receipt and distribution or other disposition of the drugs and devices. Inventories and records shall be maintained and made available for inspection and photocopying for a period of two (2) years following their creation date.~~

~~(1) Records described in this section that are kept at the inspection site or that can be immediately retrieved by computer or other electronic means shall be readily available for authorized inspection during the retention period.~~

~~(2) Records kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within two (2) working days of a request by an authorized official of a federal, state, or local law enforcement agency.~~

~~(d) Each wholesale distributor should maintain an ongoing list of persons with whom they do business.~~

535:20-7-7.8. Written policies and procedures [REVOKED]

~~(a) Wholesale drug distributors shall establish, maintain, and adhere to written policies and procedures, which shall be followed for the receipt, security, storage, inventory, transport, shipping and distribution of drugs, including policies and procedures for identifying, recording, and reporting losses or thefts, for correcting all errors and inaccuracies in inventories and implementing and maintaining a continuous quality improvement system. Such written policies and procedures shall be available for inspection.~~

~~(b) Wholesale drug distributors shall include in their written policies and procedures the following:~~

~~(1) A procedure whereby the oldest approved stock of a prescription drug product is distributed first. The procedure may permit deviation from this requirement, if such deviation is temporary and appropriate.~~

~~(2) A procedure to be followed for handling recalls and withdrawals of prescription drugs. Such procedure shall be adequate to deal with recalls and withdrawals due to any:~~

~~(A) Action initiated at the request of the Food and drug Administration (FDA) or other federal, state, or local law enforcement or other government agency, including the Board of Pharmacy;~~

~~(B) Voluntary action by the manufacturer to remove defective or potentially defective drugs from the market; or~~

~~(C) Action undertaken to promote public health and safety by replacing of existing merchandise with an improved product or new package design.~~

~~(3) A procedure to ensure that wholesale drug distributors prepare for, protect against, and handle a crisis that affects security or operation of any facility in the event of strike, fire, flood, or other natural disaster, or other situations of local, state or national emergency.~~

~~(4) A procedure to ensure that any outdated prescription drugs shall be segregated from other drugs and either returned to the manufacturer or destroyed.~~

~~(A) This procedure shall provide for written documentation of the disposition of outdated prescription drugs.~~

~~(B) This documentation shall be maintained for two (2) years after disposition of the outdated drugs.~~

~~(5) A procedure for identifying, investigating, and reporting significant drug inventory discrepancies involving counterfeit, suspected of being counterfeit, contraband, or suspected of being contraband; and for reporting of such discrepancies to the Board and to the appropriate federal agency upon discovery of such discrepancies shall be the same as in 535:20-7-7.6.~~

535:20-7-7.10. Compliance with federal, state and local laws

(a) A wholesale distributor ~~Wholesale drug distributors~~ shall operate in compliance with applicable federal, state, and local laws and regulations, including, but not limited to, the Drug Supply Chain Security Act of 2013 and the rules promulgated thereunder and the Act, 59 O.S. Section 353 et seq., and the Board rules, OAC 535. A wholesale distributor shall comply with 21 C.F.R. Part 205, e.g. facilities, security, storage and written policies and procedures.

(b) A wholesale distributor ~~Wholesale drug distributors~~ shall allow ~~permit~~ the Board ~~of Pharmacy~~ and authorized federal, state, and local law enforcement officials to enter and inspect their premises and delivery vehicles, ~~and~~ to audit its~~their~~ records and written operating procedures, and to confiscate records to the extent authorized by law or rules.

(c) A wholesaler distributor shall ship only to the address listed on the licensees's license.~~Wholesale drug distributors~~

~~that deal in controlled substances shall register with the appropriate state controlled substance authority and with the drug Enforcement Administration (DEA), and shall comply with all applicable state, local and DEA regulations.~~

535:20-7-9. Violations and penalties [REVOKED]

~~(a) Penalties for violations of this Subchapter and of federal, state and local laws and regulations are listed in Title 59, Oklahoma Statutes, Section 353, et seq.~~

~~(b) Rules of conduct, violations of the rules of conduct and other requirements of wholesalers and all applicants can be found in this Title and in 535:25.~~

535:20-7-9.1. Prohibited Conduct

The following shall be considered prohibited conduct and be a violation of these rules: Failure to follow all applicable requirements of state and federal statutes and regulations, including but not limited to, the Drug Supply Chain Security Act of 2013 and rules promulgated thereunder and the Act, 59 O.S. Section 353, et seq. and Board rules, OAC 535.

~~(1) Engaging in the wholesale distribution of drugs~~

~~(A) with intent to defraud or deceive, failing to maintain or provide a complete and accurate pedigree and/or failure to authenticate a pedigree, when required;~~

~~(B) and destroying, altering, concealing, or failing to maintain complete and accurate pedigree concerning any drug in their possession, when required;~~

~~(C) and having possession of drug pedigree documents required by the board and failing to authenticate the matters contained in the documents as required, and nevertheless distributing or attempting to further distribute drugs;~~

~~(D) with intent to defraud or deceive, falsely swearing or certifying that they have authenticated any documents related to the wholesale distribution of drugs;~~

~~(E) and forging, counterfeiting, or falsely creating any pedigree, falsely representing any factual matter contained on any pedigree, or knowingly omitting to record material information required to be recorded in a pedigree;~~

~~(F) knowingly purchasing or receiving drugs from a person, not authorized to distribute drugs, in wholesale distribution; or,~~

~~(G) selling, bartering, brokering, or transferring drugs to a person not authorized to purchase drugs, under the jurisdiction in which the person receives the drug(s) in a wholesale distribution.~~

~~(2) Forging, counterfeiting, or falsely creating any label for a drug(s) or who falsely represents any factual matter contained in any label of a drug(s).~~

~~(3) Altering, mutilating, destroying, obliterating, or removing the whole or any part of the labeling of a prescription drug or the commission of any other act with respect to a prescription drug that results in the prescription drug being misbranded.~~

~~(5) Any violation of the rules of registrant conduct in 535:25:9 is prohibited conduct.~~

~~(6) Failing to maintain suspicious order monitoring records in a suspicious order monitoring program; and failing to notify the Board, within ten (10) days, of confirmed suspicious orders.~~

535:20-7-10. Violations and penalties

(a) Penalties for violations of this Subchapter and of federal, state and local laws and regulations are listed in 59 O.S. Section 353, et seq.

(b) Rules of conduct, violations of the rules of conduct and other requirements of all applicants can be found in 535:25.

SUBCHAPTER 8. THIRD-PARTY LOGISTICS PROVIDERS

535:20-8-1. Purpose

(a) The rules in this Subchapter set out the minimum requirements for licensure as a third-party logistics provider.

(b) The rules in this Subchapter are to implement the Federal Food, Drug, and Cosmetic Act, as amended by the Drug Supply Chain Security Act of 2013, 21 U.S.C. § 360eee, et seq., other applicable federal statutes and rules and the Act, 59 O.S. Section 353 et seq. and the Board's Rules, OAC 535.

535:20-8-2. Definitions

The definitions of words or terms defined in 59 O.S. Section 353.1 and 21 U.S.C. § 360eee are incorporated herein and these words and terms shall have the same meaning when used in this Subchapter as defined in these statutes, unless the context clearly indicates otherwise.

535:20-8-3. Third-party logistics provider licensing requirement

(a) If Oklahoma is the state in which a prescription drug is shipped or is the state from which or into which a prescription drug is shipped by a third-party logistics provider, that third-party logistics provider may not ship in, into or out of Oklahoma unless each facility of such third-party logistics provider is licensed in Oklahoma. Such license shall be renewed annually by application and payment of renewal fees.

(b) If Oklahoma is the state into which a prescription drug is shipped by a third-party logistics provider, that third-party logistics provider shall also be licensed as a third-party logistics provider by the state from which that third-party logistics provider ships.

(c) A third-party logistics provider license is only valid for the name, ownership and location listed on the license. Changes of name, ownership or location require a new third-party logistics provider license.

(d) Changes in any information required for licensure must be reported to the Board, in writing, within ten (10) days (e.g. facility manager, designated representative, telephone number, etc.).

(e) When third-party logistics provider operations are conducted at more than one location, each location shall be licensed by the Board.
(f) A third-party logistics provider shall not operate from a place of residence.
(g) The third-party logistics provider facility shall be located apart and separate from any retail pharmacy licensed by the Board.
(h) A third-party logistics provider must publicly display all licenses and have readily available the most recent state and/or federal inspection reports.

535:20-8-4. Minimum required information for licensure

(a) A third-party logistics provider applicant must submit a satisfactorily completed Board-approved application together with the required fee.
(1) New applicants shall provide, at least, the following:
(A) Applicant's full name, all trade or business names used, full business address and telephone number;
(B) Type of ownership, e.g. individual, partnership, limited liability company or corporation;
(C) Name(s) of the owner(s) of the applicant, including:
(i) if a person, the name, address, Social Security number and date of birth;
(ii) if other than a person, the name, address, and Social Security number and date of birth of each partner, limited liability company member or corporate officer and corporate director and the federal employer identification number;
(iii) if a corporation, the State of incorporation; and
(iv) if a publicly traded corporation, the information in (a)(1)(C)(ii) is not required for corporate officers and corporate directors.
(D) Names of designated representatives and facility managers of the applicant, their Social Security numbers and dates of birth;
(E) Evidence of criminal background checks and fingerprinting of the applicant, if a person, and of all of applicant's designated representatives and facility managers;
(F) Proof of licensure by the state where the applicant is located (home state) and/or, if applicable, by the U.S. Secretary of Health and Human Services, Food and Drug Administration; and
(G) Upon the Board's written request, a list of all manufacturers, wholesale distributors, and dispensers for whom the third-party logistics provider provides services at such facility.
(2) Renewal applicants shall provide those items listed above.
(3) Any other information the Board deems necessary to protect the public health and safety.
(b) The Board may use an outside agency, such as a National Association of Boards of Pharmacy (NABP), at its discretion, to inspect third-party logistics providers.

535:20-8-5. Minimum qualifications

(a) The Board shall consider, at a minimum, the following factors in determining the eligibility for and renewal of licensure of third-party logistics providers:
(1) Any finding by a law enforcement agency or regulatory agency that the applicant or any of its owners have violated any federal, state, or local laws;
(2) Suspension, revocation or any other sanction against a license currently or previously held by the applicant or any of its owners for violations of state or federal laws;
(3) Any finding that the applicant or any of its owners are guilty of or pleaded guilty or nolo contendere to violating federal, state, or local criminal laws;
(4) The furnishing by the applicant of false or fraudulent material in any application;
(5) Failure to maintain and/or make available to the Board or to federal, state, or local law enforcement officials those records required to be maintained by third-party logistics providers;
(6) Any licensee who has no record of providing third-party logistics services involving prescription drugs during routine inspection may have its subsequent renewal application referred to the Board for review and possible approval or disapproval, and such review may require the licensee to appear before the Board; and
(7) Any other factors or qualifications that the Board considers relevant to and consistent with the public health and safety.
(b) A third-party logistics provider shall have and follow a diversion detection and prevention plan that includes all prescription drugs.
(c) The Board shall have the right to deny a license to an applicant if it determines that granting such a license would not be consistent with the public health and safety.

535:20-8-6. Personnel

(a) Third-party logistics providers shall establish and maintain for Board inspection a list of each partner, limited liability company member or corporate officer and corporate director, as well as designated representatives and facility managers, including a description of their duties and a summary of their qualifications.
(b) Each third-party logistics provider shall designate, in writing on a Board-approved form, a person to serve as the designated facility manager of the third-party logistics provider for each location licensed. The facility manager is responsible for all aspects of the operation of the third-party logistics provider.
(c) No third-party logistics provider shall have as an owner, designated representative or facility manager anyone convicted

of any felony for conduct relating to providing third-party logistics services involving prescription drugs, any felony for violation of 21 U.S.C. § 331(i) or (k) or any felony for violation of 18 U.S.C. § 1365 relating to product tampering. No third-party logistics provider shall have as an owner, designated representative or facility manager anyone who has violated federal or state requirements for licensure that presents a threat of serious adverse health consequences or death to humans.

535:20-8-7. Compliance with federal, state and local laws

(a) A third-party logistics provider shall operate in compliance with all applicable federal, state, and local laws and regulations, including, but not limited to, the Drug Supply Chain Security Act of 2013 and rules promulgated thereunder and the Act, 59 O.S. Section 353, et seq. and the Board's rules, OAC 535. A third-party logistics provider shall comply with the storage practices set out in 21 U.S.C. § 360eee-3(d)(2)(C).

(b) A third-party logistics provider shall allow the Board and authorized federal, state, and local law enforcement officials to enter and inspect its premises and delivery vehicles, to audit its records and written operating procedures, and to confiscate prescription drugs and records to the extent authorized by law or rules.

(c) When shipping to licensees, a third-party logistics provider shall ship only to the address listed on the licensee's license.

535:20-8-8. Prohibited conduct

The following shall be considered prohibited conduct and be a violation of these rules: Failure to follow all applicable requirements of state and federal statutes and regulations, including, but not limited to, the Drug Supply Chain Security Act of 2013 and rules promulgated thereunder, the Act, 59 O.S. Section 353, et seq. and the Board's rules, OAC 535.

535:20-8-9. Violations and penalties

(a) Penalties for violations of this Subchapter and of federal, state and local laws and regulations are listed in 59 O.S. Section 353, et seq.

(b) Rules of conduct, violations of the rules of conduct and other requirements of all applicants can be found in 535:25.

SUBCHAPTER 9. MEDICAL GAS SUPPLIERS AND DISTRIBUTORS

535:20-9-2. Definitions

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

"Drug order" means a prescription drug order issued by a licensed prescriber~~medical practitioner~~ for medical gas.

"Medical gas" means those gases and liquid oxygen upon which the manufacturer or distributor has, in compliance with federal law and regulations, placed one of several cautions, such as: "RX Only" that replaces "Caution - Federal Law prohibits dispensing without prescription".

"Medical gas distributor" means a person licensed to distribute medical gases on drug orders and to suppliers or other entities licensed to use, administer, or distribute medical gases.

"Medical gas supplier" means a person licensed to supply medical gases only on drug orders.

535:20-9-3. Medical gas suppliers

(a) **Licensing requirement.** Before conducting interstate and/or intrastate transactions in Oklahoma, a medical gas supplier shall register annually with the Board ~~of Pharmacy~~.

(1) A medical gas supplier license~~permit~~ is only valid for the name, ownership and location listed on the license ~~permit~~. Changes of name, ownership or location shall require a new medical gas supplier license~~permit~~.

(2) Changes in any information required for licensure must be reported to the Board within ten (10) days (e.g. manager, contact person, phone, etc.)

(3) Each location shall possess a medical gas supplier license~~permit~~. A medical gas supplier license~~permit~~ entitles the license~~permit~~ holder to store and supply medical gas (prescription drugs) at the licensed location.

(4) A medical gas supplier shall not operate from a place of residence.

(b) Licenses~~Permits~~ shall be issued only to those medical gas suppliers who satisfy the provisions of: ~~(1)Title~~ 59~~,~~ O.S.~~,~~ Section 353.18 (B)(1)(2) et seq., and ~~(2)All medical gas supplier applicants must meet~~ the requirements under the ~~Oklahoma Pharmacy~~ Act, this Title and the rules in 535:25 for applicants.

(c~~3~~) Medical gas supplier applicants and registrants ~~Applicants~~ shall be registered with the federal Food and Drug Administration (FDA) and meet the federal requirements to handle medical gas~~.~~ ~~(4)The~~ the Prescription Drug Marketing Act (PDMA, 21 U.S.C., Sec. 331 et seq.); and/or, ~~(5)Any~~any other applicable federal, state, or local laws and regulations.

(d~~c~~) **Minimum required information for licensure.** The minimum required information for medical gas supplier licensure shall be as follows, Medical gas supplier applicants must submit a satisfactorily completed application together with the required fee annually. This application shall include, at least, the following:

(1) The name, full business address, and telephone number;

(2) All trade or business names used by the manufacturer applicant;

(3) Address, telephone numbers, and the names of contact persons for the manufacturing facility;

(4) The type of ownership or operation (e.g., partnership, corporation, or sole proprietorship);

(5) The name(s) of the owner and/or operator of the manufacturer applicant; and

(6) Any other information the Board deems necessary to protect the public health.

(e~~d~~) **Minimum qualifications.** Medical gas suppliers must conform to the Compressed Medical Gases Guidelines published by the Department of Health and Human Services, Food and Drug Administration.

(1) Medical gas suppliers must conform to all applicable federal, state or local laws and regulations.

(2) The minimum qualifications shall be the same as those set forth in 535:25 and this Chapter. The Board shall consider, at a minimum, the following factors in reviewing the qualifications of persons who engage in the supplying of medical gases:

(A) Any convictions of the applicant under any federal, state, or local laws relating to drugs, drug samples, manufacture, packager, wholesale or retail drug distribution, or distribution of controlled substances;

(B) Any felony convictions of the applicant under federal, state, or local laws;

(C) The applicant's past experience in the handling, manufacture, packaging or distribution of drugs, including controlled substances;

(D) The furnishing by the applicant of false or fraudulent material in any application made in connection with drug or device handling, manufacturing, packing, or distribution;

(E) Suspension, sanction, or revocation by federal, state, or local government of any license currently or previously held by the applicant for the handling, manufacture, packaging, or distribution of any drugs, including controlled substances; or by any of its owners for violation of state or federal laws regarding drugs or devices;

(F) Compliance with licensing requirements under previously granted licenses, if any;

(G) Compliance with requirements to maintain and/or make available to the State Board ~~of Pharmacy~~ or to federal, state, or local law enforcement officials those records required under this section; and,

(H) Any other factors or qualifications the Board considers relevant to and consistent with the public health and safety.

(3) The Board shall have the right to deny a license to an applicant if it determines that the granting of such a license would not be consistent with the public health and safety.

(f~~e~~) **Personnel.** Personnel employed by medical gas suppliers shall have sufficient education, training, and/or experience to perform assigned functions and comply with federal, state and local licensing requirements.

(g ~~f~~) **Minimum requirements for storage, handling, and records.** Medical gas suppliers must meet minimum requirements for storage and handling, and for the establishment and maintenance of distribution records for medical gases.

(1) The following shall describe the minimum requirements for the storage and handling ~~handing~~ of medical gas prescription drugs, and for the establishment and maintenance of drug records by medical gas suppliers and their officers, agents, representatives, and employees.

(A) All medical gas suppliers of drugs shall conform to U. S. Food and Drug Administration (FDA) requirements for medical gas prescription drugs.

(B) All medical gas suppliers shall conform to the ~~Oklahoma Pharmacy~~ Act and the rules of this Title.

(C) Each facility at which drugs are stored, warehoused, handled, held, offered, marketed, or displayed shall:

(i) Be licensed by the Board;

(ii) Be of suitable size and construction to facilitate cleaning, maintenance, and proper operations;

(iii) Have storage areas designed to provide adequate lighting, ventilation, temperature, sanitation, humidity, space, equipment and security conditions;

(iv) Have a quarantine area for storage of drugs that are outdated, damaged, deteriorated, misbranded, or adulterated, or that are in immediate or sealed, secondary containers that have been opened;

(v) Be maintained in a clean and orderly condition; and,

(vi) Be free from infestation by insects, rodents, birds, or vermin of any kind.

(2) Medical gases housed by a medical gas supplier shall conform to the Compressed Medical Gases Guidelines published by the Department of Health and Human Services, Food and Drug Administration.

(h ~~g~~) **Prescription requirement.** Medical gas suppliers shall not supply medical gas without a drug order. Drug orders may be issued for institutional or licensed prescriber~~medical practitioner~~ office use as well as to a patient.

(1) An original or copy of a prescription drug order must be kept at the licensed location supplying the medical gas.

(2) A prescription drug order is only valid for one (1) year. Prescription drug orders shall be maintained for five years and be readily retrievable and available at inspection.

(i ~~h~~) **Minimum requirements for storage, handling, and records for medical gas.** The following shall describe the minimum requirements for the storage and handling~~handing~~ of medical gas prescription drugs, and for the establishment and maintenance of drug records by medical gas suppliers and their officers, agents, representatives, and employees.

(1) **Security.** Each facility used for medical gases shall be secure from unauthorized entry.

(A) Access from outside the premises shall be kept to a minimum and be well controlled.

(B) The outside perimeter of the premises shall be well-lighted.

(C) Entry into areas where drugs are held shall be limited to authorized personnel.

(D) All medical gas suppliers shall establish and maintain controls and systems that protect against, detect, and document any instances of theft, diversion, or counterfeiting. When appropriate, the security

system shall provide protection against theft or diversion that is facilitated or hidden by tampering with computers or electronic records.

(E) All medical gas suppliers shall establish and maintain a suspicious order monitoring program for controlled substances and dangerous drugs with a high likelihood of abuse:

(i) The medical gas supplier must not ship the customer's order if the order is confirmed as suspicious;

(ii) Each medical gas supplier shall notify the Board, within ten (10) days, if an order is confirmed as suspicious; and,

(iii) Medical gas suppliers shall establish guidelines and procedures for identifying dangerous drugs with a high likelihood of abuse and suspicious orders.

(2) **Storage.** All drugs shall be stored at appropriate temperatures and under appropriate conditions in accordance with requirements, if any, in the labeling of such drugs, or with the requirements in the current edition of an official compendium, such as the United States Pharmacopeia/National Formulary (USP/NF).

(A) If no storage requirements are established for a drug, the drug may be held at "controlled" room temperature, as defined in an official compendium, to help ensure that its identity, strength, quality, and purity are not adversely affected.

(B) Appropriate manual, electromechanical, or electronic temperature and humidity recording equipment, devices, and/or logs shall be utilized to document proper storage of drugs, if required.

(C) The recordkeeping requirement in this Chapter for medical gas suppliers shall be followed for all stored drugs.

(3) **Examination of materials.** Upon receipt, each outside shipping container shall be visually examined for identity and to prevent the acceptance of contaminated drugs or chemicals that are unfit. This examination shall be adequate to reveal container damage that would suggest possible contamination or other damage to the contents.

(A) Each outgoing shipment shall be carefully inspected for identity of the drug products and to ensure that there is no delivery of drugs that have been damaged in storage or held under improper conditions.

(B) The recordkeeping requirement in this Chapter shall be followed for all incoming and outgoing drugs.

(4) **Returned, damaged, and outdated drugs.** Drugs that are outdated, damaged, deteriorated, misbranded, or adulterated shall be quarantined and physically separated from other drugs until they are destroyed.

(A) If the conditions under which a drug has been returned cast doubt on the drug's safety, identity, strength, quality or purity, then the drug shall be destroyed, unless examination, testing, or other investigation proves that the drug meets appropriate standards of safety, identity, quality, strength, and purity. In determining whether the conditions under which a drug has been returned cast doubt on the drug's safety, identity, strength, quality or purity, the medical gas supplier shall consider, among other things:

(i) The conditions under which the drug has been held, stored or shipped before or during its return; and,

(ii) The condition of the drug and its container, carton, or labeling, as a result of storage or shipping.

(B) The recordkeeping requirements for medical gas suppliers in this Chapter shall be followed for all outdated, damaged, deteriorated, misbranded or adulterated drugs.

(5) **Recordkeeping.** Medical gas suppliers shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of drugs.

(A) Inventories and records shall be made available for inspection and photocopying by authorized federal, state, or local law enforcement agency officials for a period of two (2) years following disposition of the drugs.

(B) Records described in this section that are kept at the inspection site or that can be immediately retrieved by computer or other electronic means shall be readily available for authorized inspection during the retention period. Records kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within two (2) working days of a request by an authorized official of a federal, state, or local law enforcement agency.

(C) Each medical gas supplier should maintain an ongoing list of persons with whom they do business.

(6) **Written policies and procedures.** Medical gas suppliers shall establish, maintain, and adhere to written policies and procedures, which shall be followed for the receipt, security, storage, inventory, and distribution of drugs, including policies and procedures for identifying, recording, and reporting losses or thefts, and for correcting all errors and inaccuracies in inventories.

(A) Medical gas suppliers shall include in their written policies and procedures the following:~~: (i)~~ A procedure to be followed for handling recalls and withdrawals of drugs. Such procedure shall be adequate to deal with recalls and withdrawals due to any:

(i~~I~~) Action initiated at the request of the Food and Drug Administration (FDA) or other federal, state, or local law enforcement or other government agency, including the Board ~~of Pharmacy~~;

(ii~~II~~) Voluntary action by the medical gas supplier to remove defective or potentially defective drugs from the market; or

(iii~~III~~) Action undertaken to promote public health and safety by replacing of existing merchandise with an improved product or new package design.

(B) A procedure to ensure that medical gas suppliers prepare for, protect against, and handle a crisis that affects security or operation of any facility in the event of strike, fire, flood, or other natural disaster, or other situations of local, state or national emergency.

(C) A procedure to ensure that any outdated drugs shall be segregated from other drugs and destroyed.

(i) This procedure shall provide for written documentation of the disposition of outdated drugs.

(ii) This documentation shall be maintained for two (2) years after disposition of the outdated drugs.

(7) **Responsible persons.** Medical gas suppliers shall establish and maintain lists of officers, directors, managers and other persons in charge of drug distribution, storage, and handling, including a description of their duties and a summary of their qualifications.

(8) **Compliance with federal, state and local laws.** Medical gas suppliers shall operate in compliance with applicable federal, state, and local laws and regulations.

(A) Medical gas suppliers shall permit the Board ~~of Pharmacy~~ and authorized federal, state, and local law enforcement officials to enter and inspect their premises and delivery vehicles, and to audit their records and written operating procedures and to confiscate records, to the extent authorized by law and rule.

(B) Medical gas suppliers that deal in controlled substances shall register with the appropriate state controlled substance authority and with the Drug Enforcement Administration (DEA), and shall comply with all applicable state, local and DEA regulation.

(9) **Salvaging and reprocessing.** Medical gas suppliers shall be subject to the provisions of any applicable federal, state or local laws or regulations that relate to drug product salvaging or reprocessing including U.S. 21 CFR Parts 207, 210 and 211.

535:20-9-4. Medical gas distributors

(a) **Licensing requirement.** Before conducting interstate and or intrastate transactions in Oklahoma, a medical gas distributor shall register annually with the Board ~~of Pharmacy~~.

(1) A medical gas distributor license~~permit~~ is only valid for the name, ownership and location listed on the license ~~permit~~. Changes of name, ownership or location shall require a new medical gas distributor license~~permit~~.

(2) Changes in any information required for licensure must be reported to the Board within ten (10) days (e.g. manager, contact person, phone, etc.)

(3) Each location shall possess a medical gas distributor license~~permit~~. Medical gas distributor license~~permit~~ entitles the ~~permit~~ holder to store and distribute medical gas (prescription drugs) at the licensed location.

(4) A medical gas distributor shall not operate from a place of residence.

(b) Licenses~~Permits~~ shall be issued only to those medical gas distributors who satisfy the provisions of: ~~(1)Title~~ 59~~,~~ O.S.~~,~~ Section 353.18 (B)(1)(2) et seq., and ~~(2)All medical gas supplier applicants must meet~~ the requirements under the ~~Oklahoma Pharmacy~~ Act, this Title and the rules in 535:25 for applicants.

(c~~3~~) Medical gas distributor applicants and registrants ~~Applicants~~ shall be registered with the federal Food and Drug Administration (FDA) and meet the federal requirements to handle medical gas~~.(4)The~~the Prescription Drug Marketing Act (PDMA, 21 U.S.C., Sec. 331 et seq.); and/or, ~~(5)Any~~any other applicable federal, state, or local laws and regulations.

(d~~c~~) **Minimum required information for licensure.** The minimum required information for medical gas distributors licensure shall be as follows, Medical gas distributor applicants must submit a satisfactorily completed application together with the required fee annually. This application shall include, at least, the following:

(1) The name, full business address, and telephone number;

(2) All trade or business names used by the manufacturer applicant;

(3) Address, telephone numbers, and the names of contact persons for the manufacturing facility;

(4) The type of ownership or operation (e.g., partnership, corporation, or sole proprietorship);

(5) The name(s) of the owner and/or operator of the manufacturer applicant; and

(6) Any other information the Board deems necessary to protect the public health.

(e~~d~~) **Minimum qualifications.** Medical gas distributors must conform to the Compressed Medical Gases Guidelines published by the Department of Health and Human Services, Food and Drug Administration.

(1) Medical gas distributors must conform to all applicable federal, state or local laws and regulations.

(2) The minimum qualifications shall be the same as those set forth in 535:25 and this Chapter. The Board shall consider, at a minimum, the following factors in reviewing the qualifications of persons who engage in medical gas distribution:

(A) Any convictions of the applicant under any federal, state, or local laws relating to drugs, drug samples, manufacture, packager, wholesale or retail drug distribution, or distribution of controlled substances;

(B) Any felony convictions of the applicant under federal, state, or local laws;

(C) The applicant's past experience in the handling, manufacture, packaging or distribution of drugs, including controlled substances;

(D) The furnishing by the applicant of false or fraudulent material in any application made in connection with drug or device handling, manufacturing, packing, or distribution;

(E) Suspension, sanction, or revocation by federal, state, or local government of any license currently or previously held by the applicant for the handling, manufacture, packaging, or distribution of any drugs,

including controlled substances; or by any of its owners for violation of state or federal laws regarding drugs or devices;

(F) Compliance with licensing requirements under previously granted licenses, if any;

(G) Compliance with requirements to maintain and/or make available to the ~~State~~ Board ~~of Pharmacy~~ or to federal, state, or local law enforcement officials those records required under this section; and,

(H) Any other factors or qualifications the Board considers relevant to and consistent with the public health and safety.

(3) The Board shall have the right to deny a license to an applicant if it determines that the granting of such a license would not be consistent with the public health and safety.

(f ~~e~~) **Personnel.** Personnel employed by medical gas distributors shall have sufficient education, training, and/or experience to perform assigned functions and comply with federal, state and local licensing requirements.

(g ~~f~~) **Minimum requirements.** Medical gas distributors must meet minimum requirements for storage and handling, and for the establishment and maintenance of distribution records for medical gases.

(1) The following shall describe the minimum requirements for the storage and handling ~~handing~~ of medical gas prescription drugs, and for the establishment and maintenance of drug records by medical gas distributors and their officers, agents, representatives, and employees.

(A) All medical gas distributors of drugs shall conform to U. S. Food and Drug Administration (FDA) requirements for medical gas prescription drugs.

(B) All medical gas distributors shall conform to the ~~Oklahoma Pharmacy~~ Act and the rules of this Title.

(C) Each facility at which drugs are stored, warehoused, handled, held, offered, marketed, or displayed shall:

(i) Be licensed by the Board;

(ii) Be of suitable size and construction to facilitate cleaning, maintenance, and proper operations;

(iii) Have storage areas designed to provide adequate lighting, ventilation, temperature, sanitation, humidity, space, equipment, and security conditions;

(iv) Have a quarantine area for storage of drugs that are outdated, damaged, deteriorated, misbranded, or adulterated, or that are in immediate or sealed, secondary containers that have been opened;

(v) Be maintained in a clean and orderly condition; and,

(vi) Be free from infestation by insects, rodents, birds, or vermin of any kind.

(2) Medical gases housed by a medical gas distributor shall conform to the Compressed Medical Gases Guidelines published by the Department of Health and Human Services, Food and Drug Administration.

(h ~~g~~) **Prescription requirements.** Medical gas distributors shall distribute only to an entity licensed to receive medical gas or upon a prescriber's ~~practitioner's~~ drug order. A pharmacy, dentist, or licensed prescriber's ~~practitioner's practice~~ license verifies their authority to receive Rx Only medical gases.

(1) An original or copy of a prescription drug order must be kept at the licensed location distributing the medical gas.

(2) A prescription drug order is only valid for one (1) year. Prescription drug orders shall be maintained for five years and be readily retrievable and available at inspection.

(3) Distributors that sell to licensed medical gas suppliers must keep an updated copy of each supplier's license on file.

(i ~~h~~) **Minimum requirements for storage, handling and records for medical gas Rx Only drugs.** The following shall describe the minimum requirements for the storage and handling of medical gas prescription drugs, and for the establishment and maintenance of drug records by medical gas distributors and their officers, agents, representatives, and employees.

(1) **Security.** Each facility used for medical gases shall be secure from unauthorized entry.

(A) Access from outside the premises shall be kept to a minimum and be well controlled.

(B) The outside perimeter of the premises shall be well-lighted.

(C) Entry into areas where drugs are held shall be limited to authorized personnel.

(D) All medical gas distributors shall establish and maintain controls and systems that protect against, detect, and document any instances of theft, diversion, or counterfeiting. When appropriate, the security system shall provide protection against theft or diversion that is facilitated or hidden by tampering with computers or electronic records.

(E) All medical gas distributors shall establish and maintain a suspicious order monitoring program for controlled substances and dangerous drugs with a high likelihood of abuse:

(i) The medical gas distributor must not ship the customer's order if the order is confirmed as suspicious;

(ii) Each medical gas distributor shall notify the Board, within ten (10) days, if an order is confirmed as suspicious; and,

(iii) Medical gas distributors shall establish guidelines and procedures for identifying dangerous drugs with a high likelihood of abuse and suspicious orders.

(2) **Storage.** All drugs shall be stored at appropriate temperatures and under appropriate conditions in accordance with requirements, if any, in the labeling of such drugs, or with the requirements in the current edition of an official compendium, such as the United States Pharmacopeia/National Formulary (USP/NF).

(A) If no storage requirements are established for a drug, the drug may be held at "controlled" room

temperature, as defined in an official compendium, to help ensure that its identity, strength, quality, and purity are not adversely affected.

(B) Appropriate manual, electromechanical, or electronic temperature and humidity recording equipment, devices, and/or logs shall be utilized to document proper storage of drugs, if required.

(C) The recordkeeping requirement in this Chapter for medical gas distributors shall be followed for all stored drugs.

(3) **Examination of materials.** Upon receipt, each outside shipping container shall be visually examined for identity and to prevent the acceptance of contaminated drugs or chemicals that are unfit. This examination shall be adequate to reveal container damage that would suggest possible contamination or other damage to the contents.

(A) Each outgoing shipment shall be carefully inspected for identity of the drug products and to ensure that there is no delivery of drugs that have been damaged in storage or held under improper conditions.

(B) The recordkeeping requirement in this Chapter shall be followed for all incoming and outgoing drugs.

(4) **Returned, damaged, and outdated drugs.** Drugs that are outdated, damaged, deteriorated, misbranded, or adulterated shall be quarantined and physically separated from other drugs until they are destroyed.

(A) If the conditions under which a drug has been returned cast doubt on the drug's safety, identity, strength, quality or purity, then the drug shall be destroyed, unless examination, testing, or other investigation proves that the drug meets appropriate standards of safety, identity, quality, strength, and purity. In determining whether the conditions under which a drug has been returned cast doubt on the drug's safety, identity, strength, quality or purity, the medical gas distributors shall consider, among other things:

(i) The conditions under which the drug has been held, stored or shipped before or during its return; and,

(ii) The condition of the drug and its container, carton, or labeling, as a result of storage or shipping.

(B) The recordkeeping requirements for medical gas distributors in this Chapter shall be followed for all outdated, damaged, deteriorated, misbranded or adulterated drugs.

(5) **Recordkeeping.** Medical gas distributors shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of drugs.

(A) Inventories and records shall be made available for inspection and photocopying by authorized federal, state, or local law enforcement agency officials for a period of two (2) years following disposition of the drugs.

(B) Records described in this section that are kept at the inspection site or that can be immediately retrieved by computer or other electronic means shall be readily available for authorized inspection during the retention period. Records kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within two (2) working days of a request by an authorized official of a federal, state, or local law enforcement agency.

(C) Each medical gas distributor should maintain an ongoing list of persons with whom they do business.

(6) **Written policies and procedures.** Medical gas distributors shall establish, maintain, and adhere to written policies and procedures, which shall be followed for the receipt, security, storage, inventory, and distribution of drugs, including policies and procedures for identifying, recording, and reporting losses or thefts, and for correcting all errors and inaccuracies in inventories.

(A) Medical gas distributors shall include in their written policies and procedures the following; ~~: (i)~~ A procedure to be followed for handling recalls and withdrawals of drugs. Such procedure shall be adequate to deal with recalls and withdrawals due to any:

(i~~I~~) Action initiated at the request of the Food and Drug Administration (FDA) or other federal, state, or local law enforcement or other government agency, including the Board ~~of Pharmacy~~;

(ii~~II~~) Voluntary action by the medical gas distributor to remove defective or potentially defective drugs from the market; or

(iii~~III~~) Action undertaken to promote public health and safety by replacing of existing merchandise with an improved product or new package design.

(B) A procedure to ensure that medical gas distributors prepare for, protect against, and handle a crisis that affects security or operation of any facility in the event of strike, fire, flood, or other natural disaster, or other situations of local, state or national emergency.

(C) A procedure to ensure that any outdated drugs shall be segregated from other drugs and destroyed.

(i) This procedure shall provide for written documentation of the disposition of outdated drugs.

(ii) This documentation shall be maintained for two (2) years after disposition of the outdated drugs.

(7) **Responsible persons.** Medical gas distributors shall establish and maintain lists of officers, directors, managers and other persons in charge of drug distribution, storage, and handling, including a description of their duties and a summary of their qualifications.

(8) **Compliance with federal, state and local laws.** Medical gas distributors shall operate in compliance with applicable federal, state, and local laws and regulations.

(A) Medical gas distributors shall permit the Board ~~of Pharmacy~~ and authorized federal, state, and local law enforcement officials to enter and inspect their premises and delivery vehicles, and to audit their records and written operating procedures and to confiscate records, to the extent authorized by law and rule.

(B) Medical gas distributors that deal in controlled substances shall register with the appropriate state controlled substance authority and with the Drug Enforcement Administration (DEA), and shall comply with all applicable state, local and DEA regulation.

(9) **Salvaging and reprocessing.** Medical gas distributors shall be subject to the provisions of any applicable federal, state or local laws or regulations that relate to drug product salvaging or reprocessing including U.S. 21 CFR Parts 207, 210 and 211.

535:20-9-5. Violations and penalties

(a) Penalties for violations of this Subchapter and of federal, state and local laws and regulations are listed in ~~Title~~ 59~~, Oklahoma Statutes,~~O.S. Section 353, et seq.

(b) Rules of conduct, violations of the rules of conduct and other requirements of ~~medical gas suppliers and medical gas distributors and all~~ applicants can be found in ~~this Title and in~~ 535:25 ~~as defined in Title 59, O.S.Section 353.1~~.

535:20-9-6. Prohibited conduct

(a) The following shall be considered prohibited conduct and be a violation of these rules: Failure to follow all applicable requirements of state and federal statutes and regulations, including, but not limited to, the Drug Supply Chain Security Act of 2013 and rules promulgated thereunder, the Act, 59 O.S. Section 353, et seq. and the Board's rules, OAC 535.

(1) Engaging in medical gas distributing of drugs

(A) with intent to defraud or deceive, failing to maintain or provide a complete and accurate record, when required;

(B) destroying, altering, concealing, or failing to maintain complete and accurate records for any drug packaging, when required;

(C) knowingly purchasing or receiving drugs from a person, not authorized to distribute drugs, or,

(D) selling, bartering, brokering, or transferring drugs to a person not authorized to purchase drugs, under the jurisdiction in which the person receives the drug(s).

(2) Forging, counterfeiting, or falsely creating any label for a drug(s) or who falsely represents any factual matter contained in any label of a drug(s).

(3) Altering, mutilating, destroying, obliterating, or removing the whole or any part of the labeling of a drug or the commission of any other act with respect to a drug; that results in the drug being misbranded.

(4) supplying, packaging, purchasing, selling, delivering or bringing into the state contraband drug(s), or anyone who illegally possesses any amount of contraband drug(s); or,

(b) Any violation of the rules of registrant conduct in 535:25-9 is prohibited conduct.

[OAR Docket #15-576; filed 6-15-15]

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

[OAR Docket #15-577]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Requirements
535:25-1-1. Purpose [AMENDED]
Subchapter 3. Applicants, Registrants, and Applications
535:25-3-3. Qualifications and requirements for registrant applicants [AMENDED]
535:25-3-4. Requirements for applicants or registrants who have had Board action taken against any license, permit or certificate [AMENDED]
535:25-3-5. Multiple licenses / permits [AMENDED]
535:25-3-7. Change requirements and notification [AMENDED]
535:25-3-8. Requirements for Licensees [NEW]
Subchapter 5. General Requirements or Procedures
535:25-5-1. Inspector's warning notice [AMENDED]
535:25-5-3. Drug Screening [AMENDED]
535:25-5-5. Prescription drug (Rx only) purchases and record requirements [AMENDED]
Subchapter 6. Post-Military Service Applicants [NEW]
535:25-6-1. [RESERVED]
535:25-6-2. [RESERVED]
535:25-6-3. Post-Military service applicants [NEW]
Subchapter 7. Rules of Registrant Conduct
535:25-7-3. Registrant conduct [AMENDED]
535:25-7-4. Confidentiality [AMENDED]
535:25-7-5. Practice of medicine [AMENDED]
535:25-7-6. Governing body [AMENDED]
Subchapter 9. Violations of the Rules of Registrant Conduct
535:25-9-1. Scope and purpose [AMENDED]
535:25-9-3. Violating laws or rules [AMENDED]
535:25-9-4. False report or record, billing incorrectly, fraudulent billing or reports [AMENDED]
535:25-9-8. Failure to establish and maintain effective controls [AMENDED]
535:25-9-9. ~~Misfilling~~Misfill or incorrect fill of a prescription or drug order [AMENDED]
535:25-9-10. Patient Health and Safety [NEW]
535:25-9-11. Arrangements [NEW]
535:25-9-12. Professional fee [NEW]
535:25-9-13. Auto Refills [NEW]

AUTHORITY:
Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.7, 353.13, 353.13A, 353.16A, 353.17, 353.18, 353.20, 353.22, 353.24 - 353.26, 353.29, 354, and 367.8; Title 51 OS 24A et seq.; Title 75 OS, Sec 2-201, 2-208, and 2-210.

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ANALYSIS:

The revision in 535:25-1-1 corrects grammar, clarifies the rule, removes the old (d) as well as renumbers the subsections that follow. The revision in 535:25-3-3, 535:25-3-4 and 535:25-3-7 standardize Board reference, improve grammar and clarity of the rules; make changes due to the new federal drug quality and security act; and they change parenteral to sterile compounding.

The revision in 535:25-3-5 modified the multiple license and permits section, 535:25-3-7 modifies requirements and notices at change; and it clarifies the requirement that a new license must be issued prior to drugs being moved to or stored at a new address; the changes improve grammar and clarity of the rule. Requirements for licensees are added at 535:25-3-8.

The revision in 535:25-5-1 change inspector warning notices. Revisions in 535:25-5-3 535:25-5-5, 535:25-7-3, 535:25-7-4, 535:25-7-6, and 535:25-7-6 improve the grammar, punctuation and clarity of these rules; and they standardize Board references. A new 535:25-6-3 rule is added regarding post-military service applicants. The revision in 535:25-7-5 expands prohibition to mid-level practitioners.

Revisions in 535:25-9-1 corrects the scope and purpose statement. Revisions in 535:25-9-3 standardized Board and Oklahoma and federal law references. Revisions in 535:25-9-4 correct grammar, punctuation, and clarify the rules. The revision in 535:25-9-8 improve grammar and change the rules regarding effective controls and violations of registrant conduct. The change in 535:25-9-9 corrects the grammar on the rule. Added in 535:25-9-10 are rules regarding patient safety, while revised in 535:25-9-11 are rules regarding arrangements inimical to public health; 535:25-9-12 regarding professional fee and 535:25-9-13 regarding auto refills.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 1. GENERAL REQUIREMENTS

535:25-1-1. Purpose

(a) The rules of this Chapter regulate the sale of drugs, medicines, chemicals and poisons in order to ~~and~~ prevent illegal diversion of dangerous drugs.

(b) The rules of this Chapter ~~further~~ describe requirements applicable~~and exclusions referring~~ to various registrants.

(c) The rules of this Chapter describe an inspector's notice to registrants to correct deficiencies and give notice of compliance.

(d) ~~The rules of this Chapter describe the method which registrants must use to formally lift the suspension and/or probation from their license, permit, and/or certificate.~~

~~(e)~~ The rules of this Chapter describe minimum qualifications and requirements for all applicants and registrants.

(e ~~f~~) The rules of this Chapter describe registrant conduct and violations of registrant conduct.

SUBCHAPTER 3. APPLICANTS, REGISTRANTS, AND APPLICATIONS

535:25-3-3. Qualifications and requirements for registrant applicants

(a) The Board shall consider at least the following factors in reviewing the qualifications of registrants or applicants for licensure e.g.:

(1) Any charges, convictions, receipt of deferred sentence or deferred prosecution, or pleading of no contest of the applicant or registrant under any federal, state, or local laws relating to drug samples, drug distribution, or distribution of controlled substances;

(2) Any felony charges, convictions, receipt of deferred sentence or deferred prosecution, or pleading of no contest of the applicant or registrant under federal, state, or local laws;

(3) The applicant's or registrant's past experience with prescription drugs, including controlled substances;

(4) The furnishing by the applicant or registrant of fictitious, false, misleading, or fraudulent material in any application (original, new or renewal) or failing to provide information relevant to this application;

(5) The suspension or revocation by federal, state, or local government of any license currently or previously held by the applicant or registrant;

(6) Compliance with licensing requirements under previously granted licenses, if any;

(7) Compliance with requirements to maintain and/or make available to the ~~State~~ Board ~~of Pharmacy~~ or to federal, state, or local law enforcement officials those records required by rule and law ~~under this section~~;

(8) Abuse of alcohol or habit-forming drugs, or use of illegal CDS drugs or positive drug screen for such illegal substance or its~~its'~~ metabolite;

(9) Practicing as a registrant without reasonable skill and safety by reason of use and/or abuse of drugs, narcotics, chemicals or any other type of material, or as a result of any mental or physical condition; and,

(10) Any other factors or qualifications the Board considers relevant to and consistent with the public health and safety.

(b) The applicant shall be forthright and open in the provision of information to the Board in the application process. No license, permit or certificate shall be awarded to an applicant who does not provide the Board with complete open and honest responses to all requests for information.

(c) The applicant shall be candid in regards to providing information related to any academic misconduct, malpractice, legal, or disciplinary action.

(d) The applicant shall fully and completely disclose ownership of any pharmacy, wholesaler, distributor, manufacturer, repackager,~~packager~~,third-party logistics provider, outsourcing facility, medical gas supplier or medical gas distributor or

any other person licensed by the Board.~~under Title 59 O.S. Section 353.18.~~

(e) The Board shall have the right to deny a license to an applicant or registrant if it determines that the granting of such a license would not be consistent with the public health and safety.

535:25-3-4. Requirements for applicants or registrants who have had Board action taken against any license, permit or certificate

(a) If the Board approves an application of an applicant or registrant who has had a previous registration, license, permit, or certificate which was revoked or subject to Board action ~~at cancellation,~~ the applicant shall be subject to ~~the following terms:~~

~~(1) A minimum of two year probation.~~

~~(2) Any~~any specific requirements placed on the applicant by the Board based on the previous action, or pending action, and applicant's or registrant's current status.

(b ~~3~~) Any subsequent violations by the applicant or registrant shall subject the applicant or registrant to cumulative action based on previous violation on the previous license and the current violation.

(c ~~4~~) Failure of the applicant or registrant to meet any terms or requirements of the Board shall subject the applicant or registrant to Board action based on current failure and previous Board action against an applicant or a registrant ~~previous~~ license.~~License~~

(d ~~b~~) The Board shall have the right to order any additional terms or conditions that it determines are required to protect the public health and safety.

535:25-3-5. Multiple licenses / permits

(a) **Pharmacy, ~~and~~ Manufacturer, Repackager ~~Packager, or~~ Wholesaler, Distributor or Third-party logistics provider.** A ~~There shall be no multiple licensing that would include a~~ pharmacy shall not be licensed in the same location as ~~and~~a manufacturer, ~~or~~repackager, ~~packager or wholesaler~~wholesale distributor or third party logistics provider ~~in the same location~~.

(b) **Pharmacy/Pharmacy.** No more than one pharmacy license will be allowed in one location.

(c) **Wholesaler/Wholesaler.** ~~More~~No more than one wholesale distributor license will ~~not~~ be allowed in one location.

(d) **Wholesaler/Repackager ~~Packager.~~** The licensing of a wholesaler distributor and a repackager~~packager~~ in the same location will be allowed.

(e) **Pharmacy/Drug Supplier.** The licensing of a pharmacy license and pharmacy drug supplier permit in the same location will be allowed.

(f) **Pharmacy / Outsourcing Facility.** The licensing of a pharmacy and an outsourcing facility will be allowed when state and federal requirements are met.

(g) **Pharmacy/Sterile compounding~~Parenteral.~~** The licensing of a pharmacy and a sterile compounding ~~parenteral~~ pharmacy ~~permit~~ in the same location will be allowed.

(g h) **Intern/Technician.** Applicants may not hold an intern license and a technician permit at the same time.

(~~h~~i) **Pharmacist/Technician.** Applicants may not hold a pharmacist license and a technician permit at the same time. A pharmacist who has had Board action taken against his pharmacist license for whatever reason and no longer holds a current pharmacist license is not eligible for a technician permit.

535:25-3-7. Change requirements and notification

(a) Change of name, ownership, and/or location shall require a new license for ~~on~~ all business permits, certificates or licenses (e.g. pharmacy, wholesale distributor ~~wholesaler~~, repackager ~~packager~~, manufacturer, outsourcing facility, third-party logistics provider, medical gas supplier and distributor, training areas, sterile compounding ~~parenteral~~, drug supplier, etc.)

(1) A change of ownership occurs when:

(A) ~~the original owner(s) transfers 20% or more of the ownership of the entity owning the license, permit or certificate to another owner;~~

~~(B)~~ a change of 20% or more of the ownership of the entity owning the license, permit or certificate occurs (for example, when the corporation owning the license, permit or certificate sells 20% or more of the stock); or

(B ~~C~~) a change of ownership form occurs (for example, from a sole proprietor ownership to a partnership, limited liability company or corporation).

(2) Any ownership change not reported as a change of ownership because it involves a transfer of less than 20% of the ownership of the entity owning the license, permit or certificate must be reported at the next renewal of the entity license, permit or certificate.

(3) For publicly traded corporations, a routine sale of stock is not a change of ownership. (Note: a publicly traded corporation is a corporation owned by stockholders who are members of the general public and who trade shares publicly, often through a listing on a stock exchange.)

(b) Changes:

(1) Changes of ownership, name, and/or location ~~will~~ require a new license, special inspection and special inspection fee.

(2) All changes in any information required for licensure must be reported to the Board within ten (10) days (e.g. for businesses the address, manager, contact person, phone, etc. and/or for individuals name, address, etc.)

(3) Address change requires a new license prior to drugs being moved or stored at the new address, see (1) above.

(c) Every applicant for change or renewal of license, permit or certificate shall meet the requirements in 535:25 at a minimum.

~~(d) Changes in any information required for licensure must be reported to the Board within ten (10) days (e.g. for businesses the manager, contact person, phone, etc. and/or for individuals name, address, etc.)~~

535:25-3-8. Requirements for Licensees

(a) Licensees shall sell, ship, deliver, etc. only to the address listed on the receiving licensee's license.

(b) Licensees that store, ship, sell, deliver, or handle drugs shall not operate from a place of residence

(c) Licensees shall not receive drugs at other than the address listed on their license.

SUBCHAPTER 5. GENERAL REQUIREMENTS OR PROCEDURES

535:25-5-1. Inspector's warning notice

(a) **Purpose.** An inspector's warning notice protects public health by allowing registrants to expeditiously correct violations of laws and rules, and report these corrections to the Board in writing.

(b) **Recipient.** A warning notice may be issued to any registrant found to be violating the rules of this Title (OAC 535), ~~Oklahoma Statutes, Title~~ 59,O.S. Section 353 et seq., and/or any federal, state or ~~and~~ local laws and rules.

(c) **Issuance.** An inspector may issue a warning notice at the time a violation is found.

(d) ~~**Filing.** The warning notice shall become an integral part of a file.~~

~~(e)~~ **Failure to respond.** A recipient's failure to satisfactorily respond within ten days to a warning notice may be referred by the Director to the Board for review or complaint and hearing.

(e~~f~~) **Board review of ~~two~~ warning notices.** Any registrant receiving a~~two or more~~ warning notice ~~noticeswithin a twelve month period~~ may be referred by the Director to the Board for review or complaint and hearing.

535:25-5-3. Drug Screening

(a) Any individual registrant who is suspended and/or placed on probation may be required to submit to random drug screening.

(b) Random drug screening required by the Board shall~~will~~ be done at the registrant's expense.

535:25-5-5. Prescription drug (Rx only) purchases and record requirements

(a) All registrants shall keep adequate records to assure that prescription drugs are legally received and/or distributed or dispensed, as appropriate. Such records shall include, but not be limited to, all prescription drug purchase (e.g. invoices, etc.) and inventory records and shall be maintained and be readily retrievable for a period of at least 2 years.

(b) Prescription drug purchases may only be made from entities licensed to sell prescription drugs. A registrant shall exercise professional judgment regarding the purchase of prescription drugs in order to assure a safe, sanitary and legal prescription drug supply is maintained.

SUBCHAPTER 6. POST-MILITARY SERVICE APPLICANTS

535:25-6-1. [RESERVED]

535:25-6-2. [RESERVED]

535:25-6-3. Post-Military service applicants

(a) The Board shall consider the equivalent education, training and experience completed by an applicant for licensure while the applicant was a member of the United States Armed Forces or Reserves, National Guard of any state, the Military Reserves of any state, or the Naval militias of any state, and apply it in the manner most favorable toward satisfying the qualifications for issuance of a license or approval for license examination.

(b) The Board shall expedite the process of licensure by reciprocity for applicants whose spouse is an active duty member of the Armed Forces of the United States if:

(1) the military service member is on active duty within Oklahoma or claims permanent residency within Oklahoma for the six (6) months prior to assignment to active duty or during the period of active duty; and,

(2) the applicant left employment in another state to accompany the military service member spouse to Oklahoma.

SUBCHAPTER 7. RULES OF REGISTRANT CONDUCT

535:25-7-3. Registrant conduct

(a) Registrants shall ~~willat all times~~ conduct business in conformity with all federal, state and municipal laws at all times.

(b) Registrants shall conduct themselves at all times in a manner that will entitle them to the respect and confidence of the community in which they practice.

(c) Abuse of ~~Registrants shall not abuse~~ alcohol or drugs, ~~nor shall they~~ use of an illegal or controlled dangerous ~~CDS~~ substance, or testing ~~nor test~~ positive for such substance or its ~~its'~~metabolite is a violation of registrant conduct.

535:25-7-4. Confidentiality

A registrant shall~~will~~ hold the health and safety of his ~~their~~ patrons as his ~~their~~ first consideration and will not divulge the nature of the patrons' problems or ailments or any confidence entrusted to him ~~them~~ in his~~their~~ licensed capacity except in

response to legal requirements or in the best interest of the patron.

535:25-7-5. Practice of medicine

Registrants will refrain from any attempt at diagnosis or treatment that is the legally constituted right or obligation of any licensed practitioner or mid-level practitioner~~of the healing arts~~.

535:25-7-6. Governing body

(a) A registrant will recognize the ~~State~~ Board ~~of Pharmacy~~ as the governing body in the State of Oklahoma and report to them any violation of pharmacy laws or regulations that may come to his~~their~~ attention.

(b) A registrant who fails to report such violations will be subject to Board action against his ~~their~~ license, permit or certificate.

SUBCHAPTER 9. VIOLATIONS OF THE RULES OF REGISTRANT CONDUCT

535:25-9-1. Scope and purpose

The rules of this subchapter describe some violations of the rules of registrant conduct. Violations of registrant ~~professional~~ conduct include, but are not limited to, those violations described in this subchapter.

535:25-9-3. Violating laws or rules

A registrant shall not violate directly, (or indirectly, through actions of another), assist or abet in the violation of, or conspire to violate, any provision of the Oklahoma Pharmacy Act, ~~Title~~ 59, O.S. Section 353 et seq., the Federal Food, Drug, and Cosmetic Act, as amended by the Drug Quality and Security Act of 2013, the Prescription Drug Marketing Act (21 U.S.C., Sec. 331 et seq.), the Robinson-Patman Act (15 U.S.C., Sec. 13 et seq.), or federal, state and local laws and rules.

535:25-9-4. False report or record, billing incorrectly, fraudulent billing or reports

The following are violations of registrant conduct:

(1) Making or filing a ~~A~~ report or record which a registrant knows or should have known to be false, intentionally or negligently failing to file a report or record required by federal, state or local laws or rules, willfully impeding or obstructing such filing, or inducing another person to violate this rule ~~do so~~. Such reports or records include only those which the registrant is required to make or file in his capacity as a registrant;

(2) Billing or charging for quantities greater than delivered, or for a brand when a generic is dispensed~~.~~;

(3) Fraudulent billing or submitting false reports to a third party payer of prescription drugs.

535:25-9-8. Failure to establish and maintain effective controls

The following are violations of registrant conduct:

(~~a~~1) Failure to establish and maintain effective controls to prevent prescription errors; ~~is a violation of registrant conduct.~~

(~~b~~2) Failure to establish and maintain effective controls against the diversion of prescription drugs and/or controlled dangerous drugs into other than legitimate medical, scientific, or industrial channels as provided by federal, state or local laws or rules;~~is a violation of registrant conduct.~~

(~~c~~3) The sale of dangerous drugs to a person or entity not eligible to receive such drugs;~~is a violation of registrant conduct.~~

(~~d~~4) The purchase of dangerous drugs from a person or entity not eligible to possess such drugs;~~is a violation of registrant conduct.~~

(~~e~~5) Failure~~Failing~~ to establish and maintain suspicious order monitoring records in a suspicious order monitoring program; and failure to notify the Board of confirmed suspicious orders; .

(~~f~~6) Shipping ~~It is a violation to ship~~ orders that are confirmed as suspicious; and.~~.~~

(7) Shipping to other than the licensees address on the license.

535:25-9-9. ~~Misfilling~~Misfill or incorrect fill of a prescription or drug order

The incorrect fill or misfill of ~~Misfilling~~ of a prescription or drug order which departs from the standards of care ordinarily exercised by a registrant with proof of actual injury not having to be established is a violation of registrant conduct.

535:25-9-10. Patient health and safety

The health and safety of patients shall be a registrant's first consideration

535:25-9-11. Arrangements

Registrants shall oppose any arrangements inimical to public health. Such an arrangement could include, but is not limited to, an arrangement between a registrant and a prescriber or any practitioner of the healing arts whereby fees are divided or in which private formulas are concerned.

535:25-9-12. Professional fee

A registrant's fee for professional services shall be fair, equitable, and commensurate with the knowledge and skill required to compound and dispense prescriptions and/or to render other professional services.

535:25-9-13. Auto refills

A registrant shall not do auto refills of a prescription unless authorized to do so by the patient or the patient's agent.

[OAR Docket #15-577; filed 6-15-15]

TITLE 550. OKLAHOMA POLICE PENSION AND RETIREMENT SYSTEM
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #15-566]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Organization of Board
550:1-3-1. Powers of the Board [AMENDED]
550:1-3-2. Board meetings [AMENDED]
Subchapter 7. Collections and Disbursements
550:1-7-2. Pension vouchers [AMENDED]
AUTHORITY:
Oklahoma Police Pension and Retirement Board; 11 O.S. Sections 50-105.2(A)(B), and 50-106(3)
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
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Approved by Governor's declaration on June 8, 2015
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SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The proposed amendment to OAC 550:1-3-1 includes technical IRS qualification language to maintain the tax exempt status of the Oklahoma Police Pension and Retirement System.
The proposed amendment to OAC 550:1-7-2 allows members of the Oklahoma Police Pension and Retirement System the option to receive monies via electronic transfer.
The proposed amendment to OAC 550:1-3-2 provides a more efficient method to provide the agenda to board members for monthly board meetings.
CONTACT PERSON:
Darcie Gordon, Administrative Officer, Oklahoma Police Pension and Retirement System, 1001 N.W. 63rd Street, Ste. 305, Oklahoma City, OK 73116-7335, 405-840-3555 Ext. 227.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 3. ORGANIZATION OF BOARD

550:1-3-1. Powers of the Board

(a) The Oklahoma Police Pension and Retirement Board shall exercise all powers expressly granted or implied by statute.
(b) The Oklahoma Police Pension and Retirement Board shall have the power to negotiate and enter into agreements with local, state, and federal governments, agencies or instrumentalities as may be authorized by statute as necessary for the performance of its duties.
(c) The Board may exercise official powers at any location in the State of Oklahoma.
(d) Effective June 26, 2013, the rules governing the Oklahoma Police Pension and Retirement System shall be construed in accordance with federal tax law, including I.R.S. Revenue Ruling 2013-17 and I.R.S. Notice 2014-19 and subsequent federal tax regulations and rulings, but only to the extent required to maintain qualification of the Oklahoma Police Pension and Retirement System and trust under Sections 401(a) and 501(a) of the Internal Revenue Code of 1986, as amended, for a governmental plan, as defined in Section 414(d) of the Internal Revenue Code of 1986, as amended.

550:1-3-2. Board meetings

(a) **Location.** The Board may convene at any location or institution within the jurisdiction of the Board, or at such other location as the Board may specify.
(b) **Agenda.** The agenda of the Board's regular meeting shall be determined by the Chairman and Executive Director and a copy thereof ~~sent~~ provided to each Board member at least ~~five~~two days before the meeting. ~~Additional items of business may be added to the agenda as an addendum prior to posting of the agenda at the discretion of the Chairman or Executive Director.~~

SUBCHAPTER 7. COLLECTIONS AND DISBURSEMENTS

550:1-7-2. Pension vouchers

(a) The monthly pension voucher, payable to members, eligible beneficiaries, alternate payees, or the member's estate shall be directly deposited on the last business day of the month. The monthly pension benefit will not be paid by the System until a personal depository agent is identified for direct deposit of the benefit.
(b) Upon the death of a member or eligible beneficiary, the monthly pension benefit shall be payable as follows:
(1) If the member dies during the month but not on the last day of the month and there is a beneficiary, the full monthly pension benefit for the month of the member's death shall be paid to the member's beneficiary upon proper application and approval by the Board.
(2) If the member dies during the month but not on the last day of the month and there is not a beneficiary, the full

monthly pension benefit for the month of the member's death shall be paid to the member's estate.

(3) If the eligible beneficiary dies during the month but not on the last day of the month and there is another eligible beneficiary, the full monthly pension benefit for the month of the eligible beneficiary's death shall be paid to the other eligible beneficiary upon proper application and approval by the Board.

(4) If the eligible beneficiary dies during the month and there is not another eligible beneficiary, the full monthly pension benefit for the month of the eligible beneficiary's death shall be paid to the eligible beneficiary's estate.

(c) The deferred option voucher shall be mailed first class or transferred electronically through a System approved method as directed by the member, eligible beneficiaries, alternate payees, or member's estate.

[OAR Docket #15-566; filed 6-15-15]

TITLE 610. STATE REGENTS FOR HIGHER EDUCATION
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #15-434]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 11. Purchasing
610:1-11-16. Professional and Personal services contracts [AMENDED]
AUTHORITY:
Oklahoma State Regents for Higher Education; 70 O.S. §3206 (i); 74 O.S.§ 85.3A.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
October 21, 2014
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INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The rule changes address the following issues:

The Regents currently have exceptions to the purchasing policy for professional service contracts that do not include the services of education professionals. The Regents often have projects, programs and initiatives that require the unique expertise of education professionals who are intimately familiar with the Oklahoma K-12 or Higher Education systems and possess the necessary skills to achieve the goals established by the Regents. In addition to education professionals familiar with Oklahoma, there are also national and international education experts whose research and experience is invaluable to the Regents and its constituents. These individual professionals provide services that provide new perspectives and approaches that assist the agency in successfully performing essential agency functions and completing agency missions.

CONTACT PERSON:
David B. Harting, Assistant General Counsel, Oklahoma State Regents for Higher Education, (405) 225-9289.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 11. PURCHASING

610:1-11-16. Professional and Personal services contracts

The following types of professional service contracts may be awarded without competitive bidding, except as may be otherwise provided by law applicable to the State Regents. All requests for the services must be supported by a written statement from the requesting unit justifying the selection. The requesting unit must consider the specific needs of the agency, the ability of the individual or firm to meet those needs in a timely manner, and the cost of the services. All contracts for professional services must be approved by the Chancellor or the Chancellor's designee.

(1) A contract for the personal services of a physician, architect, attorney, certified public accountant, professional engineer, land surveyor, or other licensed professional as defined in 18 O.S., § 803(6).

(2) Professional services of investment managers, investment consultants and actuary services.

(3) Personal services of speakers, ~~and~~ lecturers and education professionals. ~~up to $10,000.~~

[OAR Docket #15-434; filed 6-11-15]

TITLE 612. STATE DEPARTMENT OF REHABILITATION SERVICES
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #15-543]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
612:1-1-6. Description of forms and instructions issued by the Department for public use [AMENDED]
Subchapter 3. Administrative Components of the Department
612:1-3-2. The Director of Rehabilitation Services [AMENDED]
612:1-3-2.1. The Chief of Staff of Rehabilitation Services [AMENDED]
612:1-3-8.1. Executive officers [AMENDED]
612:1-3-10. Final signature authority [AMENDED]
Subchapter 5. Program Divisions Within the Department
612:1-5-1. Overview of the department [AMENDED]

612:1-5-3. Division of ~~Visual Services (DVS)~~Vocational Rehabilitation for the Blind & Visually Impaired (DVRBVI) [AMENDED]
Subchapter 11. Compliance with the Americans with Disabilities Act of 1990
Part 1. Purpose and Legal Basis
612:1-11-2. Definitions [AMENDED]
Part 3. Reasonable Accommodation
612:1-11-15. Overview of reasonable accommodation [AMENDED]
612:1-11-16. Providing reasonable accommodations for employees [AMENDED]
Part 9. Medical and other Considerations
612:1-11-57. Undue hardship/undue burdens [REVOKED]
Subchapter 13. Civil Rights and Nondiscrimination on Basis of Race, Color, National Origin, Sex, Age or Disability
612:1-13-3. Administration of programs [AMENDED]
612:1-13-4. Dissemination of rules [AMENDED]
612:1-13-5. Awareness [REVOKED]
612:1-13-6. Maintenance of racial and ethnic data [AMENDED]
612:1-13-7. Composition of planning and policymaking bodies [AMENDED]
612:1-13-9. Complaint rules and procedures [AMENDED]

AUTHORITY:
Commission for Rehabilitation Services; 74 O.S. § 166.1 et seq.; 74 O.S. § 166.5(A)(2); 42 USC Subchapter 1 Sec. 12111 et seq. and Subchapter II Sec. 12131.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
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Approved by Governor's declaration on June 8, 2015

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June 8, 2015

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August 27, 2015

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n/a

INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
The proposed changes to Chapter 1 involve updating language to reflect restructuring of the Office of Civil Rights. Additional changes include division name change of Visual Services (VS) becoming Vocational Rehabilitation for the Blind & Visually Impaired (VRBVI). Updates include clarifying processes and updating language to reflect current use of terms.

CONTACT PERSON:
Tina Calloway, Administrative Assistant, State Department of Rehabilitation Services, Policy Development Division, 3535 N.W. 58th, Suite 500, Oklahoma City, OK 73112-4824, (405) 951-3552.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3 (5) AND 308 (E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 1. GENERAL PROVISIONS

612:1-1-6. Description of forms and instructions issued by the Department for public use

Forms and instructions issued by the Department for public use are:

(1) "A Personal Directory, Your Rights and Responsibilities as an Applicant or Client for Vocational Rehabilitation or ~~Visual Services~~ Vocational Rehabilitation for the Blind & Visually Impaired" is issued for public use as a guide to accessing services from the Department, as a guide to requesting fair hearings, and as a guide to the application and eligibility determination process. The explanations given in this publication repeat Department policy faithfully and accurately.

(2) The Certification as a Person With A Severe Disability is issued to qualifying individuals to use in applying for State government jobs, and allows for exemption from specific Merit System requirements.

(3) From time to time, the Department issues public information pamphlets for general distribution. These pamphlets present general overviews of services provided by the Department as a whole, or by Divisions or Units within the Department. These pamphlets are carefully reviewed using the two-person proofreading method to check against the official Code or Register text.

SUBCHAPTER 3. ADMINISTRATIVE COMPONENTS OF THE DEPARTMENT

612:1-3-2. The Director of Rehabilitation Services

(a) The Director of Rehabilitation Services, as the chief administrative and executive officer of the Department of Rehabilitation Services (DRS), is charged with the responsibility for day-to-day direction of the activities necessary for DRS to attain its mission as established by Title 74, Section 166.1 et seq. of Oklahoma State Statute. The work of the Director is overseen by the Commission for Rehabilitation Services.

(b) The Director directly supervises the Chief of Staff, the Chief Fiscal Officer, the Communications Director and External Relations Officer~~, and the Civil Rights Administrator~~.

(c) The Director's duties include:

(1) assuring that all of DRS is working toward its mission and the goals established by the Commission through aggressive implementation of the planning and budgeting system;

(2) serving as staff to the Commission for Rehabilitation Services, providing necessary input for decision-making and assuring that actions approved by the Commission are carried out;

(3) serving as ex officio member to the Rehabilitation Advisory Council, and consultant to the Independent Living Council;

(4) developing and maintaining cooperative relationships with lawmakers and other officials, both federal and state, to assure the fulfillment of DRS's mission;

(5) maximizing all available resources for the delivery of services to the clients DRS is charged to serve;

(6) serving as the chief spokesperson for DRS and as an advocate for the clients it serves;

(7) assuring the coordination of services with other state agencies; and,

(8) selecting staff capable of carrying out the DRS mission for the areas immediately under the Director's supervision, establishing job descriptions and specifications for each of those positions, delegating authority to complete duties assigned and overseeing the accomplishment of those assigned responsibilities.

612:1-3-2.1. The Chief of Staff of Rehabilitation Services

(a) The Chief of Staff of Rehabilitation Services assists the Director of the Department in fulfilling the chief administrative and executive responsibilities for day-to-day direction of the activities necessary for DRS to attain its mission as established by Title 74, Section 166.1 et seq. of Oklahoma State Statute. The work of the Chief of Staff is overseen by the Director of the Department of Rehabilitation Services. In the Director's absence, the work of the Chief of Staff is overseen by the Commission for Rehabilitation Services.

(b) To the extent deemed necessary and prudent by the Director, or in the Director's absence, the Chief of Staff supervises the Division Administrators for Vocational Rehabilitation Services, ~~Visual Services~~Vocational Rehabilitation for the Blind & Visually Impaired, Disability Determination, Financial Services Division, Management Services, and the Superintendents of the School for the Blind and the School for the Deaf. To the extent deemed necessary and prudent by the Director, or in the Director's absence, the Chief of Staff also supervises the Communications Director and External Relations Officer, and the Chief Fiscal Officer~~, and the Civil Rights Administrator~~.

(c) The Chief of Staff duties include:

(1) assuring that all of DRS is working toward its mission and the goals established by the Commission and the Director through aggressive implementation of the planning and budgeting system;

(2) serving as staff to the Commission for Rehabilitation Services at the direction of, or in the absence of, the Director, providing necessary input for decision-making and assuring that actions approved by the Commission are carried out;

(3) developing and maintaining cooperative relationships with lawmakers and other officials, both federal and state, to assure the fulfillment of DRS's mission;

(4) maximizing all available resources for the delivery of services to the clients DRS is charged to serve;

(5) serving as a spokesperson for DRS and as an advocate for the clients it serves;

(6) assuring the coordination of services with other state agencies; and,

(7) carrying out such other duties and assignments the Director, or in the Director's absence, the Commission deems necessary and prudent to attain the mission of DRS; delegating authority to complete duties assigned, and overseeing the accomplishment of those assigned responsibilities.

612:1-3-8.1. Executive officers

The executive officers in (1) through (~~5~~4) report directly to the Department of Rehabilitation Services Director.

(1) **Chief of Staff.** The Chief of Staff assists the Director of the Department in fulfilling the chief administrative and executive responsibilities for day-to-day direction of the activities necessary for DRS to attain its mission as established by Title 74, Section 166.1 et seq. of Oklahoma State Statute. The work of the Chief of Staff is overseen by the Director of the Department of Rehabilitation Services. In the Director's absence, the work of the Chief of Staff is overseen by the Commission for Rehabilitation Services.

(2) **Chief Fiscal Officer.** The Chief Fiscal Officer is responsible for the direction and oversight of the Department's fiscal operations, including finance, general and federal accounting, budgeting, administration and control of financial information systems, and reporting activities.

~~(3) **Civil Rights Administrator.** The Civil Rights Office is responsible for preparing the annual Affirmative Action Plan; ensuring that DRS is in compliance with all applicable state and federal laws, executive orders and other policies regarding discrimination based on race, sex, national origin, age, religion, and/or disability. The Civil Rights Administrator conducts investigations of discrimination and/or 504, ADA compliance complaints for Department employees and clients.~~

(~~4~~3) **External Relations Officer.** The External Relations Officer coordinates The Department's legislative initiatives and monitors legislative actions affecting the Department.

(~~5~~4) **Communications Director.** The Communications Director coordinates the dissemination of public information about DRS. This is accomplished through news releases, a Department newsletter, publications in appropriate media formats, and other public relations activities. The Communications Office is also responsible for producing the Department's annual report.

612:1-3-10. Final signature authority

The Department of Rehabilitation Services recognizes the importance of efficient processing of resource and operations approval requests. At the same time, the Department must assure sufficient oversight of resource allocation in order to fulfill its obligations as a steward of public funds. The Department has therefore established a signature authority listing to delineate final approval levels for resource and operations approval requests. With regard to signature authority on contracts, all expenditures must be consistent with DRS's budget categories as approved by the Commission. Delegation of final signature authority is limited to the next lower administrative level unless approved in writing by the Director. The administrator is to notify the appropriate administrative programs of delegations. Administrators have authority to approve actions within their areas of responsibility at all administrative levels below their own. The requests listed in (1) through (9) of this Subsection must continue to be reviewed and approved by the appropriate staff before presentation to the individual with final signature

authority. There are additional resource and operations approvals unique to each administrative area that are stated in the policies established for that administrative area.

(1) **Director's signature.** The Director has final signature authority for items listed in (A) through (E) of this Paragraph.

(A) Sole source contracts.

(B) Initial contracts for $250,000 or more.

(C) Notices of personnel action (may be delegated).

(D) Leave without pay requests for 90 days or more.

(E) Other actions as required by executive order, statute, etc.

(2) **Chief of Staff.** The Chief of Staff has final signature authority for items listed in (A) through (C) of this Paragraph.

(A) Initial contracts between $100,000 and $250,000 on a case by case basis and upon written authority of the Director.

(B) Initial contracts or interagency agreements which obligate the entire Department or more than one division.

(C) New brochures, forms, publications (electronic or printed), and videos produced for more than one division.

(3) **Division Administrator.** Division Administrators have final signature authority for items listed in (A) through (K) of this Paragraph.

(A) Initial contracts for less than $100,000.

(B) New or revised interagency agreements involving the division.

(C) Administrative purchases costing $10,000 or more (may be delegated). Computer purchases must be co-signed by the Administrator for Information Services.

(D) Requests for employee in-state travel (may be delegated).

(E) Requests for out-of-state employee travel.

(F) Final decisions for employee grievance resolution, other than discrimination complaints, and for adverse action after review by Human Resources.

(G) Leave without pay requests for less than 90 days.

(H) Brochures, forms, publications (electronic or printed), and videos produced for the division.

(I) Requests for internships or practicums for respective division.

(J) Memos for general distribution to the division.

(K) Grant proposals.

(4) **Executive and MSD Administrators.** Executive and MSD Administrators have final signature authority for items listed in (A) through (F) of this Paragraph.

(A) Office supply orders.

(B) Reorder of existing printed materials.

(C) MSD Unit administrative purchase requisitions under area of responsibility up to $10,000. Computer purchases must be co-signed by the Administrator for Information Services.

(D) Administrative memos under area of responsibility.

(E) Policy Transmittals by the Administrator for Policy Development and Programs Standards.

(F) Requests for employee in-state travel.

(5) **Field Coordinators and Program Managers in DVR and ~~DVS~~DVRBVI.** The Field Coordinators or Program Managers in Vocational Rehabilitation Services and ~~Visual Services~~Vocational Rehabilitation for the Blind & Visually Impaired Divisions have final signature authority for administrative purchases up to $10,000. Computer purchases must be co-signed by the Administrator for Information Services.

(6) **Program Managers in DVR and ~~DVS~~DVRBVI.** Program Managers have final signature authority for items listed in (A) through (B) of this Paragraph.

(A) Office supply requisitions other than those available on the electronic ordering system.

(B) Reorder of existing printed materials.

(7) **Superintendents at OSB and OSD.** Superintendents have final signature authority for items listed in (A) through (J) of this Paragraph for the respective school.

(A) Initial contracts for less than $100,000.

(B) Interagency agreements involving only the school.

(C) All administrative and educational purchases. Computer purchases must be co-signed by the Administrator for Information Services.

(D) Requests for all employee travel.

(E) Final decisions for adverse action after review by Human Resources.

(F) Final decisions for grievance resolutions, other than discrimination complaints.

(G) Leave without pay requests for less than 90 days.

(H) Requests for internships or practicums.

(I) Brochures, forms, publications (electronic or printed), and videos produced for the school.

(J) Grant proposals.

(8) **Supervisors at OSB and OSD.** Supervisors at OSB and OSD have final signature authority for items in (A) through (B) of this Paragraph for the respective school.

(A) Office supply orders.

(B) Reorder of existing printed materials.

(9) **Program Managers, Disability Determination Division.** Program Managers at the Disability Determination Division have final signature authority for the following items in (A) through (B) of this Paragraph.

(A) The Program Manager responsible for budgets, contracts, and purchases approves administrative purchases under $10,000. Computer purchases must be co-signed by the Administrator for Information Services.

(B) Reorder of existing printed materials.

SUBCHAPTER 5. PROGRAM DIVISIONS WITHIN THE DEPARTMENT

612:1-5-1. Overview of the department

The purpose of this Subchapter is to provide an overview of the program divisions within the Department of Rehabilitation Services. Program divisions are established for the following areas: Vocational Rehabilitation Services, ~~Visual Services~~Vocational Rehabilitation for the Blind & Visually Impaired, Disability Determination, Management Services, The Oklahoma School for the Blind and the Oklahoma School for the Deaf. Each of the Divisions has one or more components.

612:1-5-3. Division of ~~Visual Services~~Vocational Rehabilitation for the Blind & Visually Impaired (~~DVS~~DVRBVI)

The Division of ~~Visual Services~~Vocational Rehabilitation for the Blind & Visually Impaired provides diagnostic, counseling and guidance, physical restoration, training, and other services to individuals whose major disability is blindness or severe visual ~~impairment~~ impairment. All departmental managers and ~~Visual Services~~Vocational Rehabilitation for the Blind & Visually Impaired Field Coordinators report directly to the Division Administrator or designee. Rehabilitation teachers for the blind provide in-home training, counseling and instruction in daily-living skills to blind individuals. DRS has field staff assigned to meet the needs in every county of the state, although staff may not be officed in each county. Local office staff report to ~~VS~~VRBVI Program Managers, who report to the Field Coordinators. The Oklahoma Library for the Blind and Physically Handicapped provides books and magazines in special media to blind and print-limited Oklahomans. The Division of ~~Visual Services~~Vocational Rehabilitation for the Blind & Visually Impaired administers the Randolph-Sheppard Business Enterprise Program in Oklahoma, securing suitable locations for vending facilities; designing and installing equipment; recruiting, training, placing and supervising operators for the facilities.

SUBCHAPTER 11. COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT OF 1990

PART 1. PURPOSE AND LEGAL BASIS

612:1-11-2. Definitions

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

"Disability" means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual. It also means having a record of such an impairment or being regarded as having such an impairment. "Disability" does not include:

(A) sexual behavior disorders;

(B) compulsive gambling, kleptomania, or pyromania;

(C) psychoactive substance abuse disorders resulting from current illegal use of drugs; or

(D) homosexuality and bisexuality.

"Drug" means a controlled substance, as defined in Schedules I through V of Section 202 of the Controlled Substances Act [21 U.S.C. 812].

"Equal employment opportunity" means an opportunity to enjoy equal benefits and privileges of employment as are available to an average similarly situated employee without a disability.

"Essential functions" means the fundamental job duties of the employment position the individual with a disability holds or desires. The term does not include the marginal functions of the

position.

"Has a record of such impairment" means the individual has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

"Illegal use of drugs" means the use of drugs whose possession or distribution is unlawful under the Controlled Substances Act, as periodically updated by the Food and Drug Administration.

"Is regarded as having such an impairment" means:

(A) has a physical or mental impairment that does not substantially limit major life activities but is treated by a covered entity as constituting such limitation;

(B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(C) has none of the impairments defined herein but is treated by a covered entity as having a substantially limiting impairment.

"Major life activities" means functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

"Physical or mental impairment" means:

(A) any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; or

(B) any mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

"Qualified individual with a disability" means an individual with a disability who satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position. For purposes of organizational policy, the Department differentiates between a

qualified person with a disability in the area of employment and a qualified person with a disability in the area of DRS programs.

(A) **Employment:**~~An~~A qualified individual with a disability is one who, with or without reasonable accommodation, can perform the essential functions of the position that the individual holds or desires. For the purposes of the ADA, consideration shall be given to the employer's judgment regarding what functions of a job are essential. If an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

(B) **Programs:**~~An~~A qualified individual with a disability is one who, with or without reasonable modifications to rules, policies, or practices; removal of architectural, communication, or transportation barriers; or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by DRS.

"Reasonable accommodation" means:

(A) modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires; or

(B) modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or

(C) modifications or adjustments that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities.

"Relationship or association with an individual with a disability" means a qualified individual with or without a disability who has a known relationship or association with an individual who has a known disability. While such individuals are protected from discrimination in terms of equal jobs and benefits, and equal programs and activities, there is no requirement for an employer to provide a person without a disability with a reasonable accommodation. This duty only applies to qualified applicants or employees with disabilities.

"Substantially limits" means:

(A) unable to perform a major life activity that the average person in the general population can perform; or

(B) significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity.

"Undue hardship" means, with respect to the provision of an accommodation, significant difficulty or expense incurred by a covered entity. The concept of undue hardship is not limited to financial difficulty. Undue hardship refers to any accommodation that would be unduly costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature or operation of the business.

PART 3. REASONABLE ACCOMMODATION

612:1-11-15. Overview of reasonable accommodation

(a) Reasonable accommodation is a modification or adjustment to a job, the work environment, or policies that enables a qualified individual with a disability to enjoy an equal employment opportunity. A reasonable accommodation must be effective.

(b) The ADA requires reasonable accommodation in three aspects of employment:

(1) to ensure equal opportunity in the application process;

(2) to enable a qualified individual with a disability to perform the essential functions of a job; and,

(3) to enable an employee with a disability to enjoy equal benefits and privileges of employment.

(c) Reasonable accommodation requirements do not include accommodations that are for personal use.

(d) Generally, it is the responsibility of the applicant or employee with a disability to inform the Department that an accommodation is needed to participate in the application process, to perform essential job functions, or to receive equal benefits and privileges of employment.

(e) If an employee with a known disability is not performing well, or is having difficulty performing a job, the Department may assess whether this is due to a disability and may inquire whether the employee needs a reasonable accommodation. It is not appropriate for the employee's supervisor to independently initiate a request if the employee does not wish one. An individual with a disability is not required to accept an accommodation if the individual has not requested an accommodation and does not believe one is needed. However, if the individual refuses an accommodation necessary to perform essential job functions, and as a result cannot perform those functions, the individual may not be considered qualified.

(f) When a qualified individual with a disability requests an accommodation, the Department must make a reasonable effort to provide an accommodation that is effective for the individual. The person with the disability must always be consulted as the first step in considering an accommodation. The Department and the individual shall work together to identify the appropriate accommodation. The Department may consult the Job Accommodation Network or other technical assistance entities as a resource in order to reasonably accommodate an employee~~,~~or job applicant~~, or client~~.

(g) An individual with a disability may choose to provide his or her own accommodation. The individual's willingness to do so does not relieve the Department of the duty to provide the accommodation should the individual for any reason be unable or unwilling to continue to provide the accommodation.

(h) The Department may request documentation from an appropriate licensed professional regarding an individual's functional limitations, when they are not apparent, to support a reasonable accommodation request.

612:1-11-16. Providing reasonable accommodations for employees

(a) **Requests for reasonable accommodation.** ~~All~~Any DRS ~~employees~~employee who ~~qualify~~qualifies as an individual with a disability ~~have~~has a right to request reasonable accommodation. No employee will be discriminated against with regard to employment for exercising his or her rights under the Americans with Disabilities Act. To be considered qualified an employee must be able to perform the essential functions of ~~their~~ his/her position with or without a reasonable accommodation. ~~If the employee is unable to perform the essential functions with or without a reasonable accommodation they may no longer be considered qualified and may be removed from the position. The employee's supervisor shall inform the Civil Rights Administrator of each accommodation request. DRS consumers also have the right to request reasonable modification of policies, practices or procedures, and/or the removal of barriers to achieve program access. This information will include a description of the request, the proposed solution, and the date the solution is to be carried out.~~

~~(1) **Request by a consumer.** The Department has committed itself to ensuring that its offices and facilities are architecturally accessible. If an architectural barrier is identified, the local administrator is to notify DRS Property Management and the agency ADA Coordinator immediately. Other requests for reasonable accommodations should be met in the most effective and efficient manner available.~~

~~(2) **Request by an employee.** Employee requests for reasonable accommodation shall be handled on an individual, case-by-case basis. The Department shall engage in an interactive process with the qualified employee in an effort to identify reasonable accommodations that will allow the qualified individual with a disability to perform the essential job functions. It is the responsibility of the employee requesting the reasonable accommodation to actively participate in the process. This includes but is not limited to providing any documentation or information from an appropriate licensed professional indicating the disability requiring a reasonable accommodation and any functional limitations that prevent the qualified employee from being able to perform the essential functions of the position without a reasonable accommodation.~~

(b) **Accommodation request procedure.** Employee requests for reasonable accommodation shall be handled on an individual, case-by-case basis. The Department shall engage in an interactive process with the qualified employee in an effort to identify reasonable accommodations that will allow the qualified individual with a disability to perform the essential job functions. It is the responsibility of the employee requesting the reasonable accommodation to actively participate in the process. This may include but is not limited to providing requested documentation or information indicating the disability requiring a reasonable accommodation, reason the accommodation is needed and/or the nature of the accommodation sought.

(c) **Approval of accommodation requests.** The employee's supervisor may approve or deny a reasonable accommodation request as submitted, request additional information if needed for reaching a decision or identifying an effective accommodation, or refer the request to the next supervisory level. Documentation of the request, decision and accommodation solution shall be maintained in the supervisor's file.

(~~b~~d) **Appeal of accommodation solution.** ~~The Director of Rehabilitation Services is the final authority for acting on appeals of proposed and reasonable accommodation solutions. Any disputes~~Disputes concerning reasonable accommodation are subject to the final review and decision of the Director of the Department of Rehabilitation Services. The Director may intervene in requests at any time in order to bring about a prompt and impartial decision to the request. ~~The employee may appeal any accommodation decision by filing an internal agency grievance.~~If dissatisfied with the decision of the Director, the employee may pursue a complaint with the appropriate state or federal agency responsible for enforcing laws affecting provision of reasonable accommodations for employees with disabilities.

PART 9. MEDICAL AND OTHER CONSIDERATIONS

612:1-11-57. Undue hardship/undue burdens [REVOKED]

~~(a) **Employment.** The responsibility of DRS to provide a reasonable accommodation to a job applicant or an employee is limited to those situations in which it would not be an undue hardship. Undue hardship means an action requiring significant difficulty or expense; one which is unduly costly, extensive, substantial, disruptive, or that will fundamentally alter the nature of the employment. The concept of undue hardship is not limited to financial difficulty, e.g., when an action would fundamentally alter the nature of the employment position. Whether a particular accommodation will be an undue hardship is determined on a case by case basis. Factors to be considered include:~~

~~(1) the nature and cost of the accommodation needed;~~

~~(2) the overall financial resources of DRS;~~

~~(3) the overall size of DRS with respect to the number of employees;~~

~~(4) the number, type, and location of DRS facilities;~~

~~(5) the type of operations of DRS, including composition, structure, and functions of the workforce; and,~~

~~(6) the impact of the accommodation upon the operation of DRS.~~

~~(b) **Programs.** DRS is required to make its programs accessible when viewed in their entirety. It is not required to provide program access when it would result in a fundamental alteration in the nature of the program or undue financial or~~

~~administrative burdens. However, if measures to provide full program access would result in a fundamental alteration or undue burdens, DRS is still required to take measures to provide as much program access as possible without resulting in fundamental alteration or undue burdens. Furthermore, DRS has the obligation to prove that providing program access would result in a fundamental alteration or undue burden and all funding resources must be considered. The decision that fundamental alteration or undue burdens would result must be made by the Department Director. The decision must be documented in a written statement including the reasons for reaching the conclusion that fundamental alteration or undue burdens would result.~~

SUBCHAPTER 13. CIVIL RIGHTS AND NONDISCRIMINATION ON BASIS OF RACE, COLOR, NATIONAL ORIGIN, SEX, AGE OR DISABILITY

612:1-13-3. Administration of programs

~~Prior to implementation of any new programs or new methods for providing existing services, the Civil Rights Administrator will carry out a study and prepare a report which will show the impact on minority groups the implementation will have, and the accessibility of the services, as proposed, to minorities or clients with disabilities; both present and prospective.~~

~~(1) Methods of recording and reporting the delivery of the services by race will be solicited by the Civil Rights Administrator from each Department facility, institution, or local office participating in the program.~~

(~~2~~a) The Department will take positive action, consistent with Title VI regulations, ADA, or Section 504 regulations, to overcome the effects of conditions which result or have resulted in limiting participation in any program by persons of a particular race, color, national origin, sex, age or disability.

(~~3~~b) The Department will ensure that the services and activities of its programs will be accessible to clients who have disabilities.

612:1-13-4. Dissemination of rules

The Department will inform all employees, clients, applicants and the general public that all services, any and all other benefits under its program are provided on a nondiscriminatory basis. The methods of disseminating policy include (1) - (7) of this Section.

(1) Written notice on all application and admission forms.

(2) A nondiscrimination statement on all invoices, financial transaction forms, contracts and agreements, business communications, and other related documentation.

(3) A statement in all brochures and pamphlets which are distributed to beneficiaries, applicants, and the public on the Department's policy of nondiscrimination.

(4) Official posters for distribution to vendors or recipients, to be placed in prominent public places.

(5) Information to the general public on its right to file complaints, and the addresses of the Department and the ~~Oklahoma Human Rights Commission~~Office of Civil Rights Enforcement, to which complaints may be sent.

(6) In areas where there are significant numbers of non-English speaking minorities, the Department will communicate its policy, including complaint rights, in the appropriate languages.

(7) For persons with impaired sensory, manual, or speaking skills, the Department will provide appropriate auxiliary aids where necessary to afford such persons an equal opportunity to learn of its policies or to benefit from its programs or services.

612:1-13-5. Awareness [REVOKED]

~~(a) The Civil Rights Administrator will ensure that all Department staff members are provided with copies of the Department's policy statements signed by the Director pertaining to the agency's commitment to equal employment opportunity, ADA compliance and prevention of harassment on an annual basis. After reading the policy statements, each employee shall acknowledge by email attesting to receipt of the policy statements. The Human Resources Unit shall provide all new employees with current copies of the aforementioned policy statements upon entry on duty.~~

~~(b) The Civil Rights Administrator will provide program information on compliance review techniques and procedures, reporting procedures, data gathering and analysis, and any other appropriate instruction pertaining to Title VI, as needed.~~

612:1-13-6. Maintenance of racial and ethnic data

The Department will collect and maintain racial and ethnic data showing the extent to which members of minority groups are beneficiaries of and participants in its programs. Considerations of privacy or confidentiality will not be used as a bar to providing access to the ~~Human Rights Commission~~Office of Civil Rights Enforcement to records or data. The system outlined will alert the Department ~~and the Civil Rights Administrator~~ of suspect situations where there is a relatively low rate of minority participation, or where minorities do not appear to be deriving equal benefits and services. ~~The system will also assist the Civil Rights Administrator to set his or her own investigative priorities.~~

612:1-13-7. Composition of planning and policymaking bodies

~~(a) The Department shall provide individuals that are included in the affirmative action categories the opportunity for membership on its planning and advisory bodies.~~

(~~b~~a) The Department shall ensure that all its institutional vendors are aware and shall comply with the legal stipulations outlined in Federal regulations pertaining to minorities or individuals with disabilities in planning and advisory bodies.

(~~c~~b) The Department will incorporate in its requirements for institutional vendors as a condition of their approval, an assurance from those institutional vendors that every reasonable effort is made to comply with provisions of the Civil Rights Act.

(~~d~~c) The Department will further provide interested persons, including individuals with disabilities or organizations representing individuals with disabilities, the opportunity to assist in the self-evaluation of its current policies and practices and the effect thereof in regard to ADA and Section 504.

612:1-13-9. Complaint rules and procedures

(a) Any person who believes that he/she or any specific class of persons has been subjected to discrimination in a Department program subject to Title VI, ADA, or Section 504 may, personally or by a representative, file a written complaint. Department personnel will assist the complainant in the writing of the complaint if such assistance is needed. Complaints may be filed with the Department or the ~~Human Rights Commission~~Office of Civil Rights Enforcement. If filed with the Department, the complaint will be brought to the attention of the Director. A complaint must be filed no later than 180 days from the date of an alleged discriminatory act. The time for filing may, however, be extended by the responsible ~~Office or Civil Rights~~ official.

(b) After determining that the complaint falls within the jurisdiction of ~~the Civil Rights Administrator, he or she must~~Title VI, ADA, or Section 504, the Director must insure a prompt and thorough investigation of the complaint. Following investigation of the complaint, the responsible official of the Department as designated by the Director will determine whether or not discrimination did in fact occur, necessary action will be taken to correct the discriminatory practice, or require it to be corrected, and prevent any recurrence of such discrimination. The Department will take follow-up action to determine that the corrective measures have eliminated the conditions that contributed to the discriminatory act.

(c) The complainant will be advised in writing within 45 days from the receipt of the complaint as to the findings of the Department regarding the complaint. In the same written notice the complainant will be advised if he/she is not satisfied with the decision he/she may appeal to the U.S. Department of Education. The Department will maintain records to show the nature of the complaint, the details of the investigation, and the action taken by the Department. If the complaint has been found to be valid, the records will indicate the nature of the corrective action taken. All complaint records will be available for review by the ~~Human Rights Commission~~Office of Civil Rights Enforcement.

~~(d) In those cases where the complaint is filed initially with the Human Rights Commission, that office may proceed to investigate the complaint utilizing its own resources, or it may request the Department to conduct the investigation. In either instance, the identity of the complainants will be kept confidential, except to the extent necessary for the conduction of any investigation, hearing, or judicial proceeding.~~

[OAR Docket #15-543; filed 6-15-15]

TITLE 612. STATE DEPARTMENT OF REHABILITATION SERVICES
CHAPTER 3. MANAGEMENT SERVICES DIVISION

[OAR Docket #15-544]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Human Resources Unit
Part 3. Human Resources Management Section - Personnel Programs
612:3-3-20. Department of Rehabilitation Services recruitment and selection plan [AMENDED]
Subchapter 5. Policy Development and Program Standards
Part 5. Program Standards
612:3-5-30. Vocational Rehabilitation and ~~Visual Services~~Vocational Rehabilitation for the Blind & Visually Impaired compliance reviews [AMENDED]
612:3-5-31. Vocational Rehabilitation and ~~Visual Services~~Vocational Rehabilitation for the Blind & Visually Impaired outcome measures [AMENDED]
AUTHORITY:
Commission for Rehabilitation Services; 74 O.S. § 166.2
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
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SUPERSEDED EMERGENCY ACTIONS:
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INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The proposed changes to Chapter 3 involve name change of Office of Personnel Management becoming Human Capital Management. Additional changes include division name change of Visual Services (VS) becoming Vocational Rehabilitation for the Blind & Visually Impaired (VRBVI).
CONTACT PERSON:
Tina Calloway, Administrative Assistant, State Department of Rehabilitation Services, Policy Development Division, 3535 N.W. 58th, Suite 500, Oklahoma City, OK 73112-4824, (405) 951-3552.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3 (5) AND 308 (E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 3. HUMAN RESOURCES UNIT

PART 3. HUMAN RESOURCES MANAGEMENT SECTION - PERSONNEL PROGRAMS

612:3-3-20. Department of Rehabilitation Services recruitment and selection plan

(a) **Method of application.** All applicants who are permanent classified employees, or former permanent classified state employees eligible for reinstatement to the classified service, shall submit a completed ~~OPM~~HCM Personal Data Summary Sheet form for the position to the DRS Human Resources Unit or other designated location no later than the closing date and time stated in the posted notice. DRS does not carry over completed Personal Data Summary Sheets from one posting to the next unless specified on the posting. All other applicants for classified positions must apply by means of the method indicated on the vacancy notice. The DRS Human Resources Unit notifies applicants who did not meet minimum education and experience requirements for the position. Applicants may submit additional information to the DRS Human Resources Unit which reflects they meet the minimum qualifications for the position. The Human Resources Unit will submit the additional information to Human Capital Management for review. If Human Capital Management determines that minimum qualification for the position are met, the applicant log may be amended and the applicant given consideration for the position if a final selection has not been made by the selecting official.

(b) **Optional Program for Hiring Applicants with Disabilities.** Applicants that have been certified as "a person with a severe disability" by Human Capital Management will be included on the Special Appointment/Free Names list through ~~OPM~~HCM and may be considered along with other qualified internal and external applicants.

(c) **Eligibility for consideration.** The agency may consider external applicants concurrently with internal applicants following closing of the announcement. To be eligible for consideration, applicants must meet the requirements set forth in Paragraphs (1) or (2) of this Subsection.

(1) A permanent classified employee or a former state employee who is eligible for reinstatement must:

(A) submit a completed ~~OPM~~HCM Personal Data Summary Sheet form for the position to the DRS Human Resources Unit or other designated location no later than the closing date and time specified on the posting notice; and

(B) be certified by the ~~OPM~~HCM Applicant Services Division as meeting the minimum qualifications for the posted Level(s) of the Job Family. However, career progression promotions shall be exempt from this requirement provided that an employee has been in a lower level of the job family for an amount of time equal to the difference in the lengths of the experience requirements of the two levels. This exception shall not apply in any case to entry into a job family or where the next higher level is a supervisory position.

(2) All other applicants for employment may be eligible for consideration through:

(A) an open competitive certificate from ~~OPM~~HCM;

(B) Certification as a person with a severe disability under 74 O.S. 840-4.12; and/or

(C) Special Disabled Veterans Certification.

(d) **Factors for consideration.** Paragraphs (1) through (5) establish factors for consideration.

(1) In filling vacancies, the agency will consider factors such as performance appraisals, education, experience, and other qualifications related to the expected ability of an individual to perform the work successfully.

(2) The agency may also post and consider special additional factors such as limiting consideration to permanent classified employees of the DRS, special working conditions that an applicant must be willing to accept and selective qualifications required for a position.

(3) A qualified permanent classified DRS employee will be given preference when the merit, ability, and capacity of that employee is relatively equal to that of applicants from outside DRS as determined by the selection process.

(4) A qualified permanent classified DRS employee with the greatest seniority based upon the last date of continuous DRS employment will be given preference when the merit, ability, and capacity of that employee is relatively equal to other applicants as determined by the selection process.

(5) Consideration may be given to redress underutilization of targeted minority groups. To meet affirmative action goals, all available applicants may be considered.

(e) **Methods for consideration.** Paragraphs (1) through (3) establish methods for consideration.

(1) The methods for consideration may include review of personnel records, applications, ratings, work histories, attendance records, test results, references, and other documents and information relating to a person's eligibility or qualifications.

(2) Applicants may be required to participate in interviews and in other selection procedures.

(3) A personal background investigation, including any civilian and military court records may be conducted.

(f) **Entrance salary.** The entrance salary for any position in the classified service shall be governed by the Merit Rules.

(g) **Probationary period (classified service).** Individuals newly hired into the classified service will serve a probationary period. The probationary period gives the new employee an opportunity to demonstrate the ability to perform the assigned duties of the position. The initial probationary period lasts for one year, except that the Director or Chief of Staff may waive the remainder of the probationary period at any time after a probationary employee has served six months by notifying the employee and Human Capital Management in writing as to the waiver and the reasons for it. The probationary period may not be extended. However, if a probationary employee is granted leave without pay that exceeds 5 working days, the date of the final working day of the probationary period shall be adjusted by the number of working days the probationary employee

was on leave without pay in excess of 5 working days. Notification of such leave to Human Capital Management and the employee shall include the scheduled date of the final working day of the adjusted probationary period. The appointment of an employee on probationary status may be terminated whenever the performance is determined to be unsatisfactory. The probationary employee does not have the right of appeal to the Merit Protection Commission when terminated during the probationary period [530:10-11-32]. The employee's immediate supervisor is responsible for carefully observing and evaluating performance. The performance evaluation of a probationary employee must be completed no later than thirty days prior to the end of the probationary period.

(h) **Related employees (classified/unclassified service).** The Department reserves the right to make placements and work assignments of personnel as necessary to eliminate and/or prevent situations in which a position is occupied by a relative of the senior administrator of the relevant division, facility, or office. The Director may waive the prohibitions in this Subsection. The Department prohibits the employment of any person in a position which would result in:

(1) immediate supervision by a relative. Relative is defined to include wife, husband, children, parents, stepparents, parents-in-law, grandchildren, grandparents, brothers, sisters, stepchildren, brothers-in-law, sisters-in-law, sons-in-law, daughters-in-law, aunts, uncles, nieces, nephews, first cousins or any of the above with whom the employee shares a foster relationship; or

(2) two or more relatives reporting to the same immediate supervisor.

(i) **Other employment, prohibition against use of position for personal gain and avoidance of conflict of interest.** Oklahoma Ethics Commission rules [OAC Title 257] are applicable regarding prohibition against use of position for personal use.

(1) Each employee must, during office hours, devote full time, attention, and effort to the Department's business. The employee may not use office hours for private gain.

(2) An employee may accept other employment outside the employee's assigned hours of duty as long as such other employment does not interfere with the employee's work with the Department. If an employee engages in other employment while an employee of the Department, such employment or changes in the employment, as it occurs shall be reported by use of the Report of Other Employment form. Such notification shall be given to the employee's immediate supervisor.

(j) **Final selection.** While others may recruit, screen, consider and make recommendations, the decision on all appointments and changes in classification is tentative until it has the approval of the Director or designee. No offer of employment may be made until notification of final approval is received from the Personnel Office of the DRS Human Resources Unit.

SUBCHAPTER 5. POLICY DEVELOPMENT AND PROGRAM STANDARDS

PART 5. PROGRAM STANDARDS

612:3-5-30. Vocational Rehabilitation and ~~Visual Services~~Vocational Rehabilitation for the Blind & Visually Impaired compliance reviews

(a) Assigned Case Review staff will conduct reviews on a random sample of closed cases to determine if case documentation indicates consumers are being served according to standards established by the Rehabilitation Act and agency policy. Staff will use the instrument currently approved by the Director or designee and will report their findings to appropriate staff on a regular schedule.

(b) Upon request and as other duties allow, Case Review staff will conduct reviews of active cases and will report their findings to appropriate staff within agreed-upon deadlines.

(c) Case Review staff will participate in compliance reviews conducted by RSA as assigned. RSA staff will be responsible for reporting the results of such reviews unless otherwise directed by the Administrator for Policy Development and Program Standards.

612:3-5-31. Vocational Rehabilitation and ~~Visual Services~~Vocational Rehabilitation for the Blind & Visually Impaired outcome measures

(a) Assigned Program Standards staff will conduct data analysis and consumer surveys to determine actual service outcomes for the Divisions of Vocational Rehabilitation and ~~Visual Services~~Vocational Rehabilitation for the Blind & Visually Impaired. Such information will be gathered from a statistically significant random sample of consumer cases. Staff will report their findings on a regular basis to be specified by affected administrators.

(b) Outcome measures will be used to determine the overall effectiveness of the Divisions of Vocational Rehabilitation and ~~Visual Services~~Vocational Rehabilitation for the Blind & Visually Impaired in carrying out their mission. Results will therefore be reported on a program level, and not on an individual caseload level.

(c) Assigned Program Standards staff will assist RSA staff in conducting reviews of agency programs and community based rehabilitation programs funded under the Rehabilitation Act. RSA staff will be responsible for reporting the results of such reviews unless otherwise directed by the Administrator of Policy Development and Program Standards.

[OAR Docket #15-544; filed 6-15-15]

TITLE 612. STATE DEPARTMENT OF REHABILITATION SERVICES CHAPTER 10. VOCATIONAL REHABILITATION AND ~~VISUAL SERVICES~~ VOCATIONAL REHABILITATION FOR THE BLIND & VISUALLY IMPAIRED

[OAR Docket #15-545]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
612:10-1-1. Purpose [AMENDED]
612:10-1-2. Definitions [AMENDED]
612:10-1-3. Basic philosophy of rehabilitation programs [AMENDED]
612:10-1-3.1 Procedural exceptions [AMENDED]
612:10-1-3.2. Pilot projects [AMENDED]
612:10-1-5. Confidentiality [AMENDED]
612:10-1-6. Due process [AMENDED]
612:10-1-7. Purchase of services and goods for individuals with disabilities [AMENDED]
Subchapter 3. Client Participation in Cost of Services
612:10-3-2. Consideration of comparable services and benefits [AMENDED]
612:10-3-3. Client participation in services cost and financial status determination [AMENDED]
612:10-3-4. Services exempt from client participation in service costs [AMENDED]
612:10-3-5. Basic living requirements [AMENDED]
612:10-3-6. Income~~, Assets~~ and Liabilities [AMENDED]
Subchapter 7. Vocational Rehabilitation and ~~Visual Services~~Vocational Rehabilitation for the Blind & Visually Impaired
Part 1. Scope of Vocational Rehabilitation and ~~Visual Services~~Vocational Rehabilitation for the Blind & Visually Impaired
612:10-7-1. Overview of Vocational Rehabilitation and ~~Visual Services~~ Vocational Rehabilitation for the Blind & Visually Impaired [AMENDED]
612:10-7-2. Field staff responsibilities [AMENDED]
612:10-7-3. Client responsibilities [AMENDED]
Part 3. Case Processing Requirements
612:10-7-21.1. Processing incoming referrals [AMENDED]
612:10-7-21.2. Information and referral system [AMENDED]
612:10-7-24.1. Basic eligibility requirements for vocational rehabilitation services [AMENDED]
612:10-7-24.2. Assessment for determining eligibility [AMENDED]
612:10-7-24.3. Trial Work Experience and Extended Evaluation [AMENDED]
612:10-7-25.1. Order of selection [AMENDED]
612:10-7-31. Transfer of cases [AMENDED]
Part 5. Case Status and Classification System
612:10-7-50. Eligibility Status [AMENDED]
612:10-7-51. Individualized Plan for Employment [AMENDED]
Part 9. Actions Requiring Review and Approval
612:10-7-87. Actions requiring supervisor's approval [AMENDED]
Part 11. Physical and Mental Restoration Services
612:10-7-98. General guidelines for physical and mental restoration services [AMENDED]
Part 13. Supportive Services
612:10-7-130. Maintenance [AMENDED]
Part 15. Training
612:10-7-142. General guidelines for training services [AMENDED]
612:10-7-149. College and university training [AMENDED]
612:10-7-150. Continued eligibility for college or university training [AMENDED]
612:10-7-152. Payment of tuition and fees at colleges and universities [AMENDED]
612:10-7-158. Training for individuals in custody of the Department of Corrections [AMENDED]
612:10-7-161. Public and private vocational schools [AMENDED]
612:10-7-162. Textbooks, supplies, training tools and equipment [AMENDED]
Part 17. ~~Supported~~Supportive Employment Services
612:10-7-183. Ongoing support services [AMENDED]
612:10-7-184. Extended services [AMENDED]
Part 19. Special Services for Individuals who are Blind, Deaf, or have other Severe Disabilities
612:10-7-199. Reader/recording services [AMENDED]
612:10-7-201. Rehabilitation teaching services [AMENDED]
612:10-7-203. Orientation and Mobility (O & M) [AMENDED]
612:10-7-205. Services to persons who are deaf-blind [AMENDED]
612:10-7-206. Assistive technology services for individuals with visual impairments [AMENDED]
Part 21. Purchase of Equipment, Occupational Licenses and Certifications
612:10-7-216. Tools, occupational equipment, initial stocks and supplies [AMENDED]
Part 25. Transition from School to Work Program
612:10-7-245. Definitions [AMENDED]
Subchapter 9. Rehabilitation Teaching Services
Part 3. Case Processing and Recording
612:10-9-17. Application Status [AMENDED]
Subchapter 11. Independent Living Services for Older and Individuals Who are Blind
Part 1. Scope of Services
612:10-11-7. Administrative review [AMENDED]
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ANALYSIS:
The proposed changes to Chapter 10 consist of division name change of Visual Services (VS) becoming Vocational Rehabilitation for the Blind & Visually Impaired (VRBVI). Additional changes consist of clarifying terms and updating language to reflect current use of terms Updated language consists of requiring all diabetics to complete a knowledge survey regarding current best practices for the management of diabetes; requiring written medical/vocational justification when lenses and frames are purchased by DRS for clients and payment of tuition requires completion of the first semester, grade report, proof of enrollment, and an itemized invoice to support authorization.
CONTACT PERSON:
Tina Calloway, Administrative Assistant, State Department of Rehabilitation Services, Policy Development Division, 3535 N.W. 58th, Suite 500, Oklahoma City, OK 73112-4824, (405) 951-3552.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3 (5) AND 308 (E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 1. GENERAL PROVISIONS

612:10-1-1. Purpose

The purpose of this Chapter is to set forth rules for the provision of services provided by the Division of Vocational Rehabilitation and the Division of ~~Visual Services~~ Vocational Rehabilitation for the Blind & Visually Impaired.

612:10-1-2. Definitions

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

"Act" means the Rehabilitation Act [29 USC 701 et seq.].

"ADL" Activities of Daily Living often refer to the routine activities carried out for personal hygiene and health (including bathing, dressing, feeding) and for operation of a household.

"Applicant" means an individual who has completed and signed an agency application form or has otherwise requested vocational rehabilitation services; who has provided information necessary to initiate an assessment to determine eligibility and priority for services; and who is available to complete the assessment process.

"Assistive technology" means technology designed to be utilized in an assistive technology device or service.

"Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.

"Assistive technology service" means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device.

"Authorized Representative" means a client's or applicant's parent, guardian, advocate (i.e. Client Assistance Program) or other person designated by the client or applicant as the individual authorized to deal with the Department on behalf of the client or applicant, consistent with provisions of the Act. Authorized representative does not include an employee of the Department of Rehabilitation Services, another state agency, or vendor of the Department unless the person is actually the parent, guardian, or is serving in the capacity of guardian (for example: court appointed).

"Best correction" refers to the use of standard eyeglasses or contact lenses and does not include the use of bioptic telescopic systems or specialized lenses which cannot be worn by the individual on a sustained basis.

"Blind" means persons who are blind within the meaning of the State Law relating to Vocational Rehabilitation. Legal blindness means a visual acuity of 20/200 or less in the better eye with best correction, or a visual field of 20 degrees or less.

"Client/Consumer" means an individual found eligible and receiving services under the Act.

"Clubhouse model" means a psychosocial and vocational approach to work adjustment for people with mental illness. The work-ordered day is a core element of the clubhouse, which focuses on strengths, talents and abilities. Work in the clubhouse helps members develop appropriate social skills and gain self-worth, purpose, and confidence. The clubhouse enables members to return to paid work through Transitional Employment, Supported Employment and independent employment.

"Community rehabilitation program" (CRP) means a program that directly provides or facilitates the provision of vocational rehabilitation services to individuals with disabilities, and provides singly or in combination, services for an individual with a disability to enable the individual to maximize opportunities for employment, including career advancement.

"Comparable services and benefits" means services that are provided or paid for in whole or in part by other Federal, state or local public agencies, health insurance or employee benefits, and are available to the individual at the time needed to further the progress of the individual toward achieving his/her identified employment outcome.

"Compensatory training" means training required before the client can enter a formal training program or employment, such as pre-vocational or personal adjustment training.

"Competitive employment" means work in the competitive labor market that is performed on a full-time or part-time basis in an integrated setting; and for which the individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who do not have disabilities.

"Consumer Independence Support Services" (CISS) are defined as providing independent living assessment, intensive counseling, community integration, and housing modifications to further assist consumers with severe disabilities in achieving independence.

"Continuity of Services" means once an individual is selected for services in accordance with policy, regardless of the priority category from which the individual was selected, the individual will receive the necessary purchased services, including post-employment services.

"Counselor" means the qualified rehabilitation professional, who is an employee of the designated state unit, and who has primary responsibility for the management of an individual's rehabilitation services case record, including determination of eligibility, service planning and management, counseling and guidance, and determination of successful or unsuccessful rehabilitation. Counselor is equivalent to such terms as ~~VR/VS~~VR/VRBVI Specialist and ~~VR/VS~~VR/VRBVI Coordinator.

"Department" unless otherwise indicated in the text, means the Department of Rehabilitation Services as constituted in 74 O.S., Section 166.1 et seq.

"DRS" means the Department of Rehabilitation Services.

"DVR" means the Division of Vocational Rehabilitation.

"~~DVS~~DVRBVI" means the Division of ~~Visual Services~~Vocational Rehabilitation for the Blind & Visually Impaired.

"Eligibility" or "Eligible" means:

(A) when used in relation to an individual's qualification for Vocational Rehabilitation services, a determination that the individual has a physical or

mental impairment which for such individual constitutes or results in a substantial impediment to employment; can benefit in terms of an employment outcome from rehabilitation services; and requires vocational rehabilitation services to prepare for, enter, engage in, or retain gainful employment;

(B) when used in relation to an individual's qualification for Supported Employment services, a determination that the individual is eligible for Vocational Rehabilitation services; is an individual with the most severe disabilities (priority group one); and

(i) for whom competitive employment has not traditionally occurred; or

(ii) for whom competitive employment has been interrupted or intermittent as a result of a severe disability; and

(iii) who, because of the nature and severity of their disability, need intensive supported employment services, and extended services after the transition from intensive supported employment services, in order to perform such work;

(C) when used in relation to an individual's qualification for Rehabilitation Teaching services, certification that the individual is legally and/or functionally blind or has a rapidly progressive condition and may have secondary disabilities; the individual has identifiable deficiencies in independent living due to disabilities; and it is expected services will improve the individual's independence in the home and community;

(D) when used in relation to an individual's qualification for Independent Living Rehabilitation services, certification that the individual has a severe physical or mental disability; the disability results in a substantial limitation or inability to function independently in the family or community or to continue in employment; and a reasonable expectation that independent living services will significantly assist the individual improve his/her ability to function independently.

"Employment and Retention" (E&R) means short-term job coach support for individuals with severe disabilities who require assistance preparing for, obtaining, and maintaining employment.

"Employment outcome" means, with respect to an eligible individual, entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market to the greatest extent practicable; supported employment; or any other type of employment (including self-employment, telecommuting, or business ownership) that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

"Extended employment" means work in a non-integrated or sheltered setting for a public or private nonprofit agency or organization that provides compensation in accordance with the Fair Labor Standards Act and any needed support services to an individual with a disability to enable the individual to continue to train or otherwise prepare for competitive employment, unless the individual through informed choice chooses to remain in extended employment.

"Extended period of time" means when appropriate services are provided in a timely and orderly manner, completion of the Individualized Plan for Employment (IPE) will be expected to require a minimum of 6 months.

"Extended services" means ongoing support services provided to individuals with the most severe disabilities after the time-limited vocational rehabilitation services have been completed and job stabilization has been achieved. They consist of specific services, including natural supports, needed to maintain the supported employment placement. Extended services are paid from funding sources other than DRS and are specifically identified in the IPE.

"Extreme medical risk" means a risk of substantially increasing functional impairment or risk of death if medical services are not provided expeditiously.

"Functional capacities" means a client's assets, strengths, and resources which maintain or increase the individual's ability to work. Functional capacities include mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills.

"Functional limitations" means physical or mental conditions, emergent from a disability, which impair, interfere with, or impede one or more of an individual's functional capacities.

"Higher education" means universities, colleges, community/junior colleges, vocational schools, technical institutes, or hospital schools of nursing.

"Highly challenged" describes a client receiving supported employment services who, due to the nature of the disability, requires a greater level of support from the job coach to achieve and maintain employment.

"Homemaker" means a person whose primary work is performance of duties related to upkeep and maintenance of a home.

"IEP" means Individualized Education Program as required by the Individuals with Disabilities Education Act.

"Independent Living (IL) Core services" is defined as information and referral services; independent living skills training; peer counseling; and individual and systems advocacy.

"Independent Living Services" as defined in the Rehabilitation Act, 29 USC Section 705 (17) and (18), include IL core services and counseling, housing procurement and modifications, personal assistance, mobility training, rehabilitation technology, life skills training, interpreters, readers, transportation, community integration, supported living, physical rehabilitation, aids and devices, social and recreational opportunities, and other services that are necessary and not inconsistent with the Act's provisions related to independent living.

"Individual with a disability" means an individual having one or more physical or mental conditions which materially limits, contributes to limiting or, if not corrected, will probably result in limiting an individual's employment activities or vocational functioning.

"Individual with a severe disability" means with respect to eligibility for the state's Optional Program for Hiring Applicants with Disabilities, an individual who has a physical or mental impairment which seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome.

"Individual with significant disability" means an individual with a significant barrier to employment, as used in the Rehabilitation Act amendments of 1998, and an individual:

(A) who has a physical or mental impairment seriously limiting one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;

(B) whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(C) who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental illness, intellectual disability, multiple sclerosis, muscular dystrophy, musculoskeletal disorder, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, other spinal cord conditions, sickle cell anemia, specific learning disability, end-stage renal disease or other disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

"Individual with the most significant disability" means an individual with the most significant barrier to employment as used in the Rehabilitation Act amendments of 1998, and an individual with physical or mental disabilities:

(A) who has a severe physical or mental disability that seriously limits three or more major life activities in terms of an employment outcome;

(B) whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(C) who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental illness, intellectual disability, multiple sclerosis, muscular dystrophy, musculoskeletal disorder, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, other spinal cord conditions, sickle cell anemia, specific learning disability, end-stage renal disease or other disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

"Integrated setting" means:

(A) With respect to the provision of services, a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals other than non-disabled individuals who are providing services to those applicants or eligible individuals.

(B) With respect to an employment outcome, means a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals, other than non-disabled individuals who are providing services to those applicants or eligible individuals, to the same extent that non-disabled individuals in comparable positions interact with other persons.

"Intercurrent (acute) conditions" means an illness or injury occurring during the actual course of an individual's rehabilitation which, if not cared for, will complicate or delay achievement of the client's employment outcome as identified in the client's IPE.

"IPE" means the Individualized Plan for Employment.

"Job Club" is a structured learning experience for a client to build skills in self-assessment, resume development, job search and research strategies, and interview techniques to assist the person to enter a career of their choice.

"Job Coach/Employment Training Specialist" means a qualified individual providing support services to eligible individuals in supported employment and employment and retention programs. Services directly support the eligible individual's work activity including marketing and job development, applied behavioral analysis, job and work site assessment, training and worker assessment, job matching procedures, and teaching job skills.

"Long-term treatment" means medical or psychological treatment that is expected to last more than three months.

"Maintenance" is a service provided to assist with the out-of-ordinary or extra expenses to the individual resulting from and needed to support the individual's participation in diagnostic, evaluative, or other substantial services in the IPE. Activities of Daily Living (ADL) expenses are not eligible for maintenance payments.

"Milestones" means a payment system that reimburses a vendor based on incentives and outcomes. The vendor is paid when the client completes pre-defined checkpoints on the way to a desired employment goal.

"Multiple services" means the counseling and guidance provided as a routine part of case management plus two or more VR services. Comparable benefits and/or services can count toward meeting the definition of multiple services. Services routinely provided as a package do not count as multiple services for the purpose of determining the presence of a significant disability, even if two or more services are included in the package.

"Natural supports" means any assistance, relationships or interactions that allow a person to maintain employment in ways that correspond to the typical work routines and social interactions of other employees. Natural supports may be developed through relationships with people or put into place

by the adaptation of the work environment itself, depending on the support needs of the person and the environment.

"Occupational license" means any license, permit, or other written authority required by a state, city or other governmental unit to be obtained in order to enter an occupation.

"Ongoing support services" means services specified in the IPE according to individual need, which support and maintain an individual with the most severe disabilities in supported employment. Sponsored ongoing support services are provided from the time of placement until the individual is stabilized on the job. Ongoing support services are provided by one or more extended services providers, or by natural supports, following transition throughout the individual's term of employment. In transitional employment, the provision of ongoing support services must include continuing sequential job placements until job permanency is achieved.

"Other Qualified Rehabilitation Personnel" means qualified rehabilitation personnel who, in addition to rehabilitation counselors, are necessary to facilitate the accomplishment of the employment outcomes and objectives of an individual (Section 100(a)(3)(E) of the Act.) Other qualified rehabilitation personnel include, but are not limited to, rehabilitation teachers of the blind who are certified at the national level as Certified Vision Rehabilitation Therapists (CVRT) or who are CRC-eligible (Section 101(a)(7)(B) of the Act). The agency has determined that nationally certified rehabilitation teachers of the blind are necessary for the provision of vocational rehabilitation services and accomplishment of employment outcomes in Homemaker cases and that in their role as Other Qualified Rehabilitation Personnel; nationally certified rehabilitation teachers are approved to manage Homemaker cases through closure.

"Package of services" means several services which are usually provided together for the same purpose. The services in a package are usually, but not always, from the same category of services (see definition of multiple services, this section). Examples include, but are not limited to: surgery, anesthesia, and hospitalization; or personal computer, software, and peripheral equipment.

"Personal assistance services" means a range of services provided by one or more persons designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform without assistance if the individual did not have a disability.

"Physical and mental restoration services" means services which are necessary to correct or substantially modify a physical or mental condition which is stable or slowly progressive, within a reasonable period of time.

"Physical or mental disability" means a physical or mental condition which, if not corrected, materially limits, contributes to limiting or will result in limiting an individual's activities or functioning.

"Rehabilitation Act" means the Rehabilitation Act [29 USC 701 et seq.].

"Related factors" means those factors which are not directly attributable to the impediment to employment, but which have impact on the potential for successful rehabilitation. They frequently become evident only from an assessment of the person's social, vocational, educational, and environmental circumstances.

"Section 504 Plan" is a plan designed as a protection for students with disabilities who may not be considered eligible for special education under IDEA in compliance with Section 504 of the Rehabilitation Act of 1973 as amended.

"Small business enterprises" means a small business operated by blind or other individuals with severe disabilities under the management and supervision of the state DRS. Such businesses include only those selling, manufacturing, processing, servicing, agricultural, and other activities which are suitable and practical for the effective utilization of the skills and aptitudes of individuals who are blind or individuals who have severe disabilities. Small business enterprise provides substantial gainful employment or self-employment commensurate with the time devoted by the operators to the business, the cost of establishing the business and other factors of an economic nature.

"Stabilization" means the period of time when job coach support is reduced to the long-term maintenance level while the individual retains employment, and personal satisfaction with the job, as well as employer satisfaction with the person's job performance. Stabilization must include appropriate individualized supports, including a minimum of two employee contacts and one employer contact per month.

"Substantial impediment to employment" means that a physical or mental disability (in the light of related medical, psychological, vocational, educational, cultural, social or environmental factors) that impedes an individual's occupational performance, by preventing his/her obtaining, retaining, or preparing for a gainful occupation consistent with his/her capacities and abilities.

"Supported employment" (SE) means competitive work in integrated work settings, or employment in integrated work settings in which individuals are working toward competitive work, consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individuals, for individuals with the most severe disabilities who meet the eligibility criteria for supported employment. This term includes transitional employment for persons who are individuals with the most severe disabilities due to mental illness (see the definition for "transitional employment").

"Transitional employment" (TE) means, when referring to the Supported Employment Program, a series of temporary job placements in competitive work in integrated settings with ongoing support services for individuals with the most severe disabilities due to mental illness.

"Transportation" is a service provided to assist with the costs of travel, including instruction in the use of public transportation vehicles and systems, which result from and are needed to support the individual's participation in diagnostic, evaluative, or other substantial and necessary VR services.

"Unpaid family worker" means a person who works without pay on a family farm or in a family business, operated by a family member who is related by blood or marriage.

"VR" means the Division of Vocational Rehabilitation, or the more general term vocational rehabilitation services, depending upon the context.

"~~VS~~VRBVI" means the Division of ~~Visual Services~~Vocational Rehabilitation for the Blind & Visually Impaired, ~~or the more general term visual services,~~ depending upon the context.

612:10-1-3. Basic philosophy of rehabilitation programs

(a) **Purpose.** The purpose of programs and services provided by the Division of Vocational Rehabilitation (DVR) and the Division of ~~Visual Services~~Vocational Rehabilitation for the Blind & Visually Impaired (~~DVS~~DVRBVI) is to empower individuals with disabilities to maximize employment, economic self-sufficiency, independence, and inclusion and integration into society through comprehensive programs of vocational rehabilitation. Vocational rehabilitation programs are designed to assess, plan, develop and provide vocational rehabilitation services for individuals with disabilities, consistent with their strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice, so that they may prepare for and engage in gainful employment (34 CFR 361.1 (b)).

(b) **Basic philosophy.** DVR and ~~DVS~~DVRBVI vocational rehabilitation programs are carried out in accordance with the principles stated in Section 100 (3) of the Rehabilitation Act including,

(1) Individuals with disabilities, including individuals with the most significant disabilities, are generally presumed to be capable of engaging in gainful employment and the provision of individualized vocational rehabilitation services can improve their ability to become gainfully employed.

(2) Individuals with disabilities must be provided the opportunities to obtain gainful employment in integrated settings.

(3) Individuals with disabilities must have the opportunity to be active and full partners in their vocational rehabilitation process.

(4) Qualified vocational rehabilitation counselors and other qualified and specialized rehabilitation personnel are necessary to facilitate the accomplishment of the employment outcomes and objectives of an individual.

612:10-1-3.1. Procedural exceptions

Procedures set forth in this Chapter are not intended to reflect every situation that might confront DVR or ~~DVS~~DVRBVI staff or to replace the staff's use of good judgment. In individual cases an exception from basic procedures may be requested. Authority to approve certain deviations from standard procedure rests with the division administrator. Authority to approve certain procedural exceptions has been delegated to program managers and field coordinators. Only those exceptions stated in rule may be applied to rules.

612:10-1-3.2. Pilot projects

The purpose of pilot projects is to allow the Divisions of Vocational Rehabilitation and ~~Visual Services~~Vocational Rehabilitation for the Blind & Visually Impaired to design and evaluate service delivery innovations on a scale that will provide for an effective trial without being disruptive to the entire organization. Such pilot projects might include trials of innovative policies, standards, and/or procedures.

(1) **Authorization of pilot projects.** The Division Administrator may approve applications for pilot projects after review and approval of the pilot by the ~~DVR/DVS~~DVR/DVRBVI Management Team. Approval of an application for a pilot project by the Division Administrator will constitute authority to implement the pilot project for a length of time to be specified by the Division Administrator. The Division Administrator can terminate the pilot project at any time prior to the specified project duration. The pilot project may not be extended beyond the originally approved time period.

(2) **Effect of DRS policy on pilot projects.** The Director of the Department of Rehabilitation Services may waive the applicability of specified departmental policies when necessary to implement a meaningful trial of the approved pilot project. The waiver will apply only to the pilot project specified by the Director, and will be effective only for the duration of the pilot project. The waiver will end immediately upon termination or completion of the model project.

612:10-1-5. Confidentiality

(a) **General guidelines.** All client or applicant information acquired will remain the property of DRS. All casework materials are to be maintained in the appropriate case record. The terms "release of information", "release of personal information", and similar terms refer to providing access to the record, or providing copies, summaries, descriptions, or other reproductions of the actual case record materials and not to the materials themselves. All applicants, clients, or client representatives will be informed of the Department's policies on confidentiality of personal information. This information will only be used and released for purposes directly related to the administration of the Vocational Rehabilitation and ~~Visual Services~~Vocational Rehabilitation for the Blind & Visually Impaired programs. Information containing identifiable personal information will not be shared with advisory or other bodies who do not have official responsibility for the administration of these programs. In the administration of the program, the DVR and ~~DVS~~DVRBVI units may obtain personal information from service providers and cooperating agencies under assurances the information will not be further divulged. Use and release of personal information will conform to applicable state and federal laws and regulations. Questions regarding release of information are to be directed to the Department's general counsel. Staff are to consult the general counsel before providing trial testimony, depositional testimony, or a sworn affidavit concerning consumer information. Moreover, if served with a subpoena for the release of client information, staff should notify the general counsel immediately. In a legal proceeding, client information can only be released without the client's consent in response to a court order. A subpoena by itself is not sufficient to authorize disclosure of client information.

(b) **Written release required.** Release of personal information must be by written consent of the individual or authorized representative. If requested in writing by an applicant or eligible individual, DRS will make all requested information in that individual's record of services available to the individual in a timely manner except as provided in subsection (c). The Department's Authorization for Release of Information form may be used when the client requests that personal information be released by DRS to a third party and may also be used to request confidential information from other sources. Other release forms are acceptable, as long as they provide the required information. Written authorization for release of information must include:

(1) the nature of the information to be released;

(2) designation of the parties to whom the information is to be released;

(3) the specific purpose for which the released information may be used;

(4) designation of the agency or person authorized to disclose the information; and

(5) dates of initiation and termination of consent.

(c) **Release of information to the individual.** The individual, or the individual's representative, will be given access to the relevant case record, or provided copies of requested information upon providing a written authorization for release of information, except as in (1) through (3) of this Subsection.

(1) Psychological, psychiatric, mental health and substance abuse treatment records and information from psychological, psychiatric, mental health and substance abuse treatment practitioners may only be obtained provided the requirements of Section 1-109 of Title 43A of the Oklahoma Statues are met. Under these circumstances, refer the individual, or the individual's representative, to the treating health professional.

(2) When a DRS professional staff person believes medical or other information not covered in (1) of this Subsection may be harmful to the individual, the information may not be released directly to the individual but must be provided to the individual through a third party chosen by the individual, which may include, among others, an advocate, a family member, or a qualified medical or mental health professional, unless a representative has been appointed by a court to represent the individual, in which case the information must be released to the court-appointed representative.

(3) Information obtained from another organization or agency may be released only through that agency, or under the conditions established by the outside agency, organization or providers. For example, information from the Veteran's Administration and Social Security Administration may not be released. Refer the individual requesting such information to the source from which the information was obtained.

(d) **Request for information correction.** An individual who believes that information in the individual's case record is inaccurate or misleading may request that the information be amended. Even if the information is not amended, the request for amendment must be documented in the case record.

(e) **Release of information to other programs or authorities.** Paragraphs (1) through (4) of this Subsection provide the rules governing release of personal information to other programs or authorities.

(1) Upon receiving the informed written consent of the individual, or the individual's representative, information may be released to another agency or organization. Only that information that would be released to the involved individual, or the individual's representative will be released, and only to the extent that the other program or organization demonstrates that the information requested is necessary for its program.

(2) Personal information will be released if required by Federal law or regulations.

(3) Personal information will be released in response to investigations in connection with law enforcement, fraud, or abuse, unless expressly prohibited by Federal or State laws or regulations, and in response to an order issued by a judge, magistrate, or other authorized judicial officer.

(4) Personal information may be released in order to protect the individual or others if the individual poses a threat to his or her safety or to the safety of others.

(f) **Release of information for audit, evaluation or research.** Personal information may be released to an organization, agency, or individual engaged in audit, evaluation, or research, only:

(1) for the purposes directly connected with the administration of the DVR or ~~DVS~~DVRBVI program;

(2) for purposes which would significantly improve the quality of life for persons with disabilities; and

(3) if the organization, agency or individual assures:

(A) The information will be used only for the purpose it is being provided;

(B) The information will be released only to persons officially connected with the audit, evaluation or research;

(C) The information will not be released to the individual;

(D) The information will be managed in a manner to safeguard confidentiality; and

(E) The final product will not reveal any personal identifying information without the informed written consent of the involved individual or the individual's representative.

612:10-1-6. Due process

(a) **Notification of rights to due process.** Any applicant or client of DVR or ~~DVS~~DVRBVI dissatisfied with a determination that affects the provision of vocational rehabilitation services may request a timely review of the determination. Each applicant or client, or as appropriate, the individual's authorized representative will be informed of:

(1) the right to get decisions regarding the individual's case reviewed by an impartial hearing officer;

(2) the right to pursue mediation on decisions regarding the individual's case;

(3) the names and addresses of individuals with whom requests for mediation or due process hearings may be filed;

(4) the manner in which a mediator or impartial hearing officer may be selected; and

(5) the availability of assistance from the client assistance program.

(b) **When notification of rights to due process is required.** The notifications specified in (a) shall be provided in writing, and in appropriate accessible format:

(1) at the time an individual applies for VR services;

(2) at the time an individual is assigned to the State's order of selection;

(3) at the time the Individualized Plan for Employment is developed; and

(4) upon reduction, suspension, or cessation of VR services for the individual.

(c) **Client Assistance Program (CAP).** The purpose of the Client Assistance Program (CAP) as described in this Section is to provide assistance with informing and advising clients and applicants of all available benefits under the Rehabilitation Act. When requested by clients and applicants, CAP will assist them in their relationships with projects, programs, and Community Rehabilitation Programs providing services to them under the Act.

(1) The Oklahoma CAP has the authority to pursue legal, administrative and other appropriate remedies to ensure the protection of the rights of individuals with disabilities who are receiving treatment, services or rehabilitation under the Act within the State.

(2) Vocational Rehabilitation agencies are required by Federal statute to advise all clients and applicants of the existence of CAP, the services provided by the program, and how to contact the program. A brochure is provided to each individual at the time of application and development of the IPE.

(3) Counselors must assure clients and applicants have access to CAP without fear of reprisal and are not pressured against or otherwise discouraged from using CAP services.

(4) The CAP staff members will provide the following services:

(A) Helping clients or applicants to understand rehabilitation service programs under the Act;

(B) Advising clients or applicants of benefits available to them through rehabilitation programs authorized under the Act and their rights and responsibilities in connection with those benefits;

(C) Otherwise assisting clients and applicants in their relationships with projects, programs, and Community Rehabilitation Programs providing rehabilitation services under the Act;

(D) Helping clients or applicants by pursuing or assisting them in pursuing legal, administrative, and other available remedies when necessary to ensure the protection of their rights under the Act;

(E) Advising State and other agencies of identified problem areas in the delivery of rehabilitation services to individuals with disabilities and suggesting methods and means of improving agency performance; and

(F) Providing information to the public concerning the CAP and Title I of the ADA.

(5) Clients may be referred to CAP by any one of the following:

(A) The client's counselor;

(B) Other DRS representative;

(C) Office of Handicapped Concerns' Hotline;

(D) Self;

(E) Any other interested party.

(6) Every client or applicant has the right to protection of information provided by him/her from unauthorized or indiscriminate disclosure. DVR and ~~DVS~~DVRBVI will provide CAP officials information regarding an individual's case in accordance with 612:10-1-5 and applicable Federal law and regulations.

(7) The CAP staff will make periodic field visits to facilitate CAP's availability to clients or applicants who cannot travel to Oklahoma City.

(d) **Supervisory review.** DVR and ~~DVS~~DVRBVI use a supervisory review process to resolve disagreements as close to the field service delivery level as possible. The objective of the supervisory review process is a timely resolution of disagreements, and is not to be used to delay or deny a fair hearing before a hearing officer or the services of an impartial mediator. The supervisory review of a counselor determination starts the 60 day time period established under (f)(5) of this Section. The request for a fair hearing is submitted at this time in accordance with (f)(2) of this Section.

(1) The supervisory review is usually conducted by the program manager. If the program manager was involved in the disputed determination, the field coordinator conducts the administrative review. If the field coordinator was involved in the disputed determination, the division administrator conducts the administrative review.

(2) The decision that results from the administrative review will be stated in a letter to the individual, or to the individual's representative, with copies to the case record, the program manager, and the hearings coordinator. The letter will identify the individual, case number, caseload, and office location. The body of the letter will state the reason for the administrative review and the decision resulting from that review. If the administrative review resolves the disagreement, the Withdrawal of Request for Hearing form must be submitted with the copy of the letter that is sent to the hearings coordinator.

(e) **Mediation.** Whenever a fair hearing is requested under this Section, mediation shall be offered as an option to resolve a disputed decision. DRS uses the voluntary mediation services of the Oklahoma Supreme Court. The supervisor will arrange for a mediator with the Early Settlement Center that is most convenient to the consumer upon receipt of a request for mediation. DRS will bear the cost of the mediation. The mediation session will be scheduled in a timely manner. An

agreement reached by the parties to the dispute in the mediation will be set forth in writing. Discussions that occur during the mediation process will be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding. Should the dispute be resolved through mediation, a withdrawal of request for hearing must be submitted to the hearings coordinator. The parties to the mediation may be required to sign a confidentiality pledge prior to commencement of the process. Nothing in this Subsection shall be construed to preclude the parties from informally resolving the dispute. The Departmental representative attending the mediation must be the individual who has final decision making authority for the question in dispute. The mediation:

(1) must be entered into voluntarily by all parties;

(2) is not used to deny or delay the hearing or any other right; and

(3) Is conducted by a qualified and impartial mediator.

(f) **Fair hearing process.** The fair hearing process will be conducted in accordance with (1) through (10) of this Subsection.

(1) **Services under IPE to continue.** No services being provided under the IPE shall be stopped, delayed, or reduced by the Department pending a final resolution of a requested hearing unless so requested by the individual or individual's authorized representative; or the service was obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual with disabilities.

(2) **Request for a fair hearing.** The individual has 30 calendar days following the date on the notice of the adverse decision to request a fair hearing.

(A) The individual requesting a fair hearing, may submit it to the local office, or may send it directly to the hearings coordinator in State Office. DVR and ~~DVS~~DVRBVI staff will assist the individual in completing this form and with preparation of evidence from the case record in conformance with 612:10-1-5, if so requested.

(B) DVR and ~~DVS~~DVRBVI staff will immediately notify their supervisor of the request for a fair hearing so that the administrative review can be started by the appropriate staff person. The completed Hearing Summary form, a copy of the notice of the adverse decision, and all supporting materials to be used in the hearing must be sent to the hearings coordinator as soon as possible. If a request for a fair hearing is submitted to the local office, staff will immediately forward it with the other materials.

(C) Prior to the actual fair hearing, the hearings coordinator will provide copies of materials the agency will use in the fair hearing to the individual and/or the individual's representative in conformance with 612:10-1-5.

(3) **Withdrawal of request for a fair hearing.** The individual, or the individual's representative, may submit a withdrawal of request for hearing any time following the submission of a request for a fair hearing up to the time the hearing is actually held. If the issue is resolved prior to the fair hearing, the individual, or the individual's representative, must submit a Withdrawal of Request for Hearing to end the fair hearing process.

(4) **Selection of impartial hearing officer.** The hearings coordinator will select an impartial hearing officer from a list of qualified impartial hearing officers maintained and identified by the State unit. Once selected, the impartial hearing officer will assume responsibility for arranging and conducting the fair hearing with the assistance of agency staff as necessary. The hearings coordinator will be apprised of events in the hearing process, and will be provided copies of all correspondence.

(A) Selections will be made randomly; or by agreement between the director of the designated State unit and the applicant or eligible individual or, as appropriate, the individual's representative; from the list of available impartial hearing officers. The hearings coordinator will forward all relevant materials to the assigned impartial hearing officer.

(B) The impartial hearing officer will send written notice of the fair hearing to all parties involved. The written notice of the fair hearing will include the name, address, and a brief vita of the impartial hearing officer.

(C) The individual may request a different impartial hearing officer based upon presented evidence that a conflict of interest exists consistent with Section 7 (16) of the Rehabilitation Act and 34 CFR 361.5(b)(25). A request for a different impartial hearing officer must be made within five days of receiving the fair hearing notice.

(5) **Scheduling of the fair hearing.** The fair hearing must be held within 60 calendar days from the date the request for a fair hearing is received, unless the issue is resolved prior to the 60th day or the parties agree to a specific extension of time. The administrative review must be conducted and concluded within the same 60 days. Delays or continuances will not be given for the purpose of extending the provision of services. Any agreement to an extension of time must be formalized in writing.

(6) **Consumer's participation in hearing.** At a fair hearing, the individual, or the individual's representative, is afforded the opportunity to:

(A) present additional evidence, information, and witnesses to the impartial hearing officer;

(B) be represented by counsel or other advocate selected by the applicant or eligible individual; and

(C) examine all witnesses and other relevant sources of information and evidence.

(7) **Agency staff attendance.** Professional staff involved in the disputed determination will appear at the hearing to provide appropriate information and evidence and testimony. Other staff will appear as directed.

(8) **Order of proceedings in the fair hearing.** The Impartial Hearing Officer will conduct the fair hearing in accordance with State laws regarding conduct of individual proceedings before an agency, and applicable Federal laws and regulations. Although the order of proceedings

is at the discretion of the Hearing Officer, generally, the fair hearing follows this order of proceedings:

(A) presentation, arguments, and disposition of all preliminary motions and matters;

(B) opening statements;

(C) information and evidence presented by the agency;

(D) evidence presented by the grievant;

(E) rebuttal by either or both sides;

(F) closing statements by the grievant;

(G) closing statements by the agency; and

(H) rebuttal by grievant.

(9) **Decision.** The hearing officer makes a decision based on the provisions of the approved State Plan, the Act, Federal vocational rehabilitation regulations, and State regulations and policies that are consistent with Federal requirements and on whether or not the counselor properly applied rules. The hearing officer does not have the authority to rule upon the legality of DRS rules that are consistent with Federal requirements. A decision made after a fair hearing shall be final, unless a party to the fair hearing requests a review under Paragraph (10) of this Subsection. The hearing officer provides the individual, or the individual's representative, and the hearings coordinator a full written report of the findings and grounds for the decision within 30 days of the completion of the hearing. The hearings coordinator will immediately forward the decision to the Director of DRS. The impartial hearing officer may make one of several decisions, which include, but are not limited to:

(A) finding in favor of the grievant;

(B) upholding the determination or action of the agency;

(C) accepting a withdrawal of the appeal confirmed in writing signed by the grievant, or the grievant's representative; or

(D) accepting a settlement of the issues agreed to by the grievant and the agency which must include a written withdrawal of request for a hearing.

(10) **Review of impartial hearing officer's decision.** Any party involved in a fair hearing may request an impartial review of the impartial hearing officer's decision within 20 calendar days of that decision. This review will be conducted by the Governor or the Governor's designee to whom DRS is assigned. The review will be conducted in accordance with the standards in (A) through (E) of this paragraph:

(A) The Governor or the Governor's designee will not delegate responsibility for this review to any officer or employee of DRS.

(B) The Governor or the Governor's designee will provide an opportunity for the submission of additional evidence and information relevant to a final decision concerning the matter under review.

(C) The Governor or the Governor's designee will make a final decision within 30 days of the request for administrative review. The decision will be provided to all parties, and/or to the parties' authorized representatives, in writing. The written decision will include a full report of the findings, and the grounds for the decision.

(D) The Governor or the Governor's designee cannot overturn or modify a decision, or part of a decision, made by an impartial hearing officer that supports the position of the individual unless the Governor or the Governor's designee concludes, based upon clear and convincing evidence, that the decision of the hearing officer is clearly erroneous on the basis of being contrary to the approved State plan, the Act, Federal vocational rehabilitation regulations, or State regulations and policies that are consistent with Federal requirements. The Governor or the Governor's designee will apply the standards presented in (i) through (iii) of this Subparagraph when conducting the review of the hearing officer's decision.

(i) The hearing officer's decision shall not be arbitrary, capricious, an abuse of discretion, or otherwise unreasonable.

(ii) The hearing officer's decision shall be supported by substantial findings of fact.

(iii) In reaching the initial decision, the impartial hearing officer shall correctly apply Federal and State law, regulation, agency policy, and the approved State Plan as they pertain to the specific issue in question.

(E) A decision made under this Paragraph shall be final unless a party involved in the hearing brings a civil action.

(g) **Civil proceedings.** Any party aggrieved by a final decision of an impartial hearing officer, or by the Governor or the Governor's designee, may bring a civil action for review of the decision. The action may be brought in any State court of competent jurisdiction or in a district court of the United States of competent jurisdiction without regard to the amount in controversy. If a party brings a civil action, the final decision of the impartial hearing officer, or of the Governor or the Governor's designee, shall be implemented pending review by the court. In any action brought under this Subsection, the court:

(1) shall receive the records relating to the hearing, and the records relating to any review conducted under (f)(10), if applicable;

(2) shall hear additional evidence at the request of a party to the action; and

(3) basing the decision of the court on the preponderance of the evidence, shall grant such relief as the court determines to be appropriate. [29 USC 722]

(h) **Standards for impartial hearing officers.** In addition to qualifications required in a contract with the Department, an impartial hearing officer must meet the standards set forth in (1) through (6) of this Subsection:

(1) cannot be an employee of a public agency (other than an administrative law judge, hearing examiner, or employee of an institution of higher learning);

(2) cannot be a member of the Oklahoma Rehabilitation Council;

(3) has not been involved previously in the vocational rehabilitation of the applicant or eligible individual;

(4) must have knowledge of the delivery of vocational rehabilitation services, the State plan required under Section 101 of the Act, and the Federal and State rules governing the provision of such services and training with respect to the performance of official duties;

(5) must have no personal, professional or financial interest that would be in conflict with the objectivity of the impartial hearing officer; and

(6) must have successfully completed impartial hearing officer training presented by DRS.

(i) **Standards for impartial mediators.** In addition to qualifications required in a contract with the Department, an impartial mediator:

(1) will be trained and certified or licensed in effective mediation techniques;

(2) will not be an employee of a public agency (other than an Administrative Law Judge, hearing examiner, employee of a State Office of Mediators, or employee of an institution of higher education);

(3) will not be a member of the Oklahoma Rehabilitation Council;

(4) must be knowledgeable in laws and regulations relating to the provision of VR services;

(5) has not been involved previously in the vocational rehabilitation of the applicant or eligible individual; and

(6) must have no personal, professional or financial interest that would be in conflict with the impartiality of the mediator.

612:10-1-7. Purchase of services and goods for individuals with disabilities

(a) All Department authorizations are made in compliance with the state purchasing policy under legal authority of the Director or by an employee to whom the Director has delegated such authority. Services, other than diagnosis, must be in an approved Individualized Plan for Employment prior to authorization. All authorizations are to be issued prior to or simultaneously with the provision of the services. Verbal authorizations may be made when needed to ensure effective delivery of services. Verbal authorization must be followed immediately by the actual authorization. Separate authorizations for each fiscal year are required when a planned service extends beyond a single fiscal year. Rehabilitation professionals may not authorize fees for services in excess of those established by the Department unless approved by the Division Administrator. A prior written purchasing agreement is required before authorization can be made to any medical vendor or post-secondary school. Other nonmedical vendors will not require a prior written purchasing agreement unless stated otherwise in the DRS policy manual section(s) for that service. When a vendor has a prior written purchasing agreement with the Department, and required approvals have been obtained, authorization may be issued for consumer services directly to that vendor. All other consumer services will be purchased pursuant to the rules in (g) and (h) of this Section. However, a requisition may be submitted to the DRS Purchasing Section if, in the judgment of the responsible rehabilitation professional, the best interests of the consumer and/or the agency would be served by having the Purchasing Section handle the procurement. In either case, once items have been received and checked against the authorization, the appropriate DVR or ~~DVS~~DVRBVI staff, in accordance with (g) and (h) of this Section, approves the claim, then forwards it to the DRS Financial Services Division. When a vendor does not abide by the authorization or written purchasing agreement or bills and accepts fees from the client in addition to those agreed upon, the rehabilitation professional will bring this to the immediate attention of the supervisor for action by the administration. The vendor will not be used for further rehabilitation services until agreement to discontinue the objectionable practice is reached.

(b) Since the Department is a state-federal agency, it does not pay sales, excise, or transportation taxes.

(c) All claims for medical and/or nonmedical client services must be filed on claim forms approved by the Department. When the provision of an authorization is fulfilled, payment for the authorized client services constitutes payment in full. The client will not have any financial liability other than the amount required of clients who must participate in the cost of the service provided. The individual is liable for services he/she arranged which were not planned and initiated under the auspices of DRS. When DVR and ~~DVS~~DVRBVI funds are used to supplement third party medical resources, participation cannot exceed the difference between the third-party payment and the Department's established schedule.

(d) The client must transfer, assign, or authorize payments to the Department of any and all claims against Health Insurance or Liability Insurance companies or other third parties, to the full extent of all payments for medical services made by the Department.

(e) The Department retains right and title to any tools, equipment, durable medical equipment, or other goods costing $500 or more purchased with DVR and ~~DVS~~DVRBVI funds, until and unless such goods are released to the client. Upon delivery of any such goods to the client, a Receipt for Equipment and Title Agreement must be completed and approved.

(1) **Completion of Program:** Any tools, equipment or durable medical goods purchased for training or occupational purposes remain with the client after completion of the program of services if they can be used in the client's chosen vocation. If the client fails to complete the program of service, the counselor will make effort to reclaim the goods to transfer to another client.

(2) **Disposition at closure:** Case recording must reflect the disposition at the time of closure of tools, equipment, and goods provided the client. All occupational tools, equipment, and durable medical goods remain the property of the agency until released. If the client is not using the items, the counselor will pick them up if an economical savings to the agency will result, and if the transfer will not endanger the health or safety of the client.

(3) **Title Release:** Title on any tools, equipment or durable medical equipment purchased with DRS funds for

training or occupational purposes will not be released to the client until the counselor has determined the client is using the items as planned.

(f) When the rehabilitation professional determines an authorization or portion of an authorization will not be utilized, procedures to cancel the remaining services will be completed. Before the case is closed, all unliquidated authorizations must be canceled or accounted for to determine if a claim will be made against any outstanding authorization.

(g) Purchasing consumer goods or services, other than direct client payments, when there is no prior written purchasing agreement is basically a three step process. These steps include specifying the requirements for the goods or services, authorizing for the purchase, and receiving delivery of the goods or services. For audit purposes, no one person can perform more than one of these steps. A different person is required for:

(1) identifying the requirement for the purchase;

(2) placing the order; and

(3) accepting the material or service.

(h) When a prior written purchasing agreement for consumer goods or services, other than direct client payments, is not required, and the service or package of services to be obtained will cost the amount of the DCAM authority order limit or less, the rehabilitation professional and client will jointly choose an appropriate vendor. The rehabilitation professional will then authorize for the planned services to the chosen vendor. When a prior written purchasing agreement for consumer services, other than direct client payments, is not required, and the service or package of services will cost more than the DCAM authority order limit, the rehabilitation professional will follow rules in (1) through (7) of this Subsection.

(1) The rehabilitation professional will obtain specialist recommendations for purchase requirements and approvals in accordance with agency policy.

(2) The participation of the client, or the client's authorized representative, will be obtained in deciding upon at least three vendors to be contacted by the rehabilitation professional to obtain bids for the goods or services. The rehabilitation professional will review available vendor information with the client, or client's authorized representative, to jointly determine which vendor(s) can best meet the needs of the client in terms of product and service function, quality, and vendor accessibility.

(3) At least three vendors offering the goods or services will be contacted to obtain bids. To expedite planning and service delivery, bids may be obtained verbally. Upon request, contacted vendors will be afforded at least 24 hours in which to prepare and submit the verbal bid. The rehabilitation professional will ensure that all bids are submitted in writing for the same or comparable items, and will document the bids received by using the Vendor Bid Documentation Form.

(4) The rehabilitation professional will issue the appropriate authorization and claim to the vendor submitting the lowest and best bid. If the rehabilitation professional managing the case is also the recognized specialist who identified the purchase requirements, then the supervisor will issue the appropriate authorization. Authorization may be issued to a vendor not submitting the lowest bid only with strong documentation that the selected vendor can best meet the needs of the client. When the bid is in excess of $5,000.00 the successful bidder will sign a non-collusion statement (to be sent with the claim), which will be maintained in the case service record.

(5) In the case of a vehicle modification or housing modification, upon completion of the authorized services, the counselor will contact the AT Specialist to schedule inspection of the work in accordance with 612:10-7-220 and 612:10-11-38. The AT Specialist will complete the "Assistive Technology Inspection Report" verifying the modification conforms to acceptable standards and the work is satisfactory.

(6) Upon delivery of the goods or services in accordance with the IPE and authorization, a rehabilitation staff person other than the specialist who specified the purchase requirements and the rehabilitation professional who authorized the purchase will accept delivery, verify that goods received match the vendor invoice, sign the appropriate claim form, sign and attach the invoice and forward them to the DRS Financial Services Division.

(7) Upon delivery of any goods costing $500 or more to the client, a Receipt for Equipment and Title Agreement must be completed and approved.

(8) Itemized documentation will be in the case record on all orders costing less than $500 and the client will acknowledge their receipt. (For example, signing and dating the packaging slip, vendor's invoice, or typed list of goods.)

(9) Returned or repossessed items must be documented on for "Receipt for Equipment and Title Agreement" and the final disposition noted in Case Narrative entry.

(i) Program Managers will review case records when submitted for approvals to ensure that purchases are being awarded in a manner that ensures competition and client participation within the scope of DRS and applicable fiscal rules. At least once each fiscal year a random selection of case records will be reviewed by the DRS Central/Departmental Services Unit to monitor compliance with DRS and applicable fiscal rules. If a Program Manager has reason to believe that a rehabilitation professional is not making a good faith effort to award purchases in a competitive manner and in accordance with agency policy, a fiscal audit of the entire caseload will be requested to determine the appropriate action to take.

(j) Pursuant to 74 O.S. 85.44A, any goods or services required under a court order shall be purchased in accordance with DRS fiscal rules.

SUBCHAPTER 3. CLIENT PARTICIPATION IN COST OF SERVICES

612:10-3-2. Consideration of comparable services and benefits

(a) Prior to providing any VR service to an eligible individual, except those services specified in Paragraph (1), the VR counselor will determine whether comparable services and

benefits are available under any other program unless any of the conditions in Paragraph (2) apply to the individual.

(1) The VR services listed in (A) through (F) are to be provided without first determining the availability of comparable services and benefits. However, comparable services and benefits may be used for these VR services if the comparable services and benefits are readily available at the time the VR services are needed. VR services exempt from a required search for comparable services and benefits are:

(A) information and referral services to eligible individuals not in an open priority group under the order of selection;

(B) assessment for determining eligibility and vocational rehabilitation needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology;

(C) counseling and guidance, including information and support services to assist an individual in exercising informed choice;

(D) referral and other services to secure needed services from other agencies through cooperative agreements;

(E) job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services; and

(F) rehabilitation technology, including telecommunications, sensory, and other technological aids and devices.

(2) Determining whether comparable benefits and services are available will not be required prior to providing any VR services if that determination would interrupt or delay:

(A) the progress of the individual toward achieving the employment outcome identified in the IPE;

(B) an immediate job placement; or

(C) the provision of such services to any individual at extreme medical risk.

(b) Counselors will advise clients of available benefits, help in completing the application for such benefits when needed, and refer clients to the appropriate contact person. Each client is required to apply for such benefits. DVR and ~~DVS~~DVRBVI will not participate in the cost of services for any client who fails to apply for and accept available comparable benefits.

(c) Whether or not the client must participate in the cost of VR services has absolutely no effect upon the required search for, or use of, available comparable benefits. Available comparable benefits cannot be used in place of client resources when the client is required to participate in the cost of VR services.

(d) Awards and scholarships based upon merit will not be counted as comparable benefits.

(e) A student loan is not a comparable benefit. Failure to apply for a student loan which must be repaid will not be cause to withhold participation by DVR or ~~DVS~~DVRBVI. Clients who have defaulted on a student loan will not be assisted with post-secondary training until the client has cleared the default or has made arrangement with the lender on the terms of payment. Documentation of the arrangement made must be in the case record before post-secondary training services are provided when it is known a client has defaulted on a loan. The counselor will inform such clients of organizations which can help resolve debt problems, such as credit counseling services and legal aid.

(f) Clients are expected to provide the counselor a copy of the award letter(s) or other written notice of comparable benefits received from other sources, and it is expected the comparable services and benefits available to the client will be used to defray all or part of the cost of the individual's IPE.

(g) The client's IPE will be reviewed and amended by the client and VR counselor whenever comparable services or benefits that were not accounted for in the original plan become available to the client.

(h) Cooperative agreements between DRS and other service providers may affect how comparable services and benefits available from such service providers will be applied in an IPE. Cooperative agreements entered into by DRS with other service providers will include:

(1) provisions for determining and stating the financial responsibility of each agency in providing services;

(2) conditions, terms, and procedures for DRS to be reimbursed by other agencies for providing covered services;

(3) procedures for resolving interagency disputes under the agreement; and

(4) coordination of agency procedures for timely VR services delivery.

612:10-3-3. Client participation in services cost and financial status determination

(a) DVR and ~~DVS~~DVRBVI require the client to participate in the cost of some vocational rehabilitation services if the client and/or client's family ~~resources~~income ~~exceed~~exceeds the established basic living requirement for the applicable family size. Any client who has been determined eligible for Social Security benefits under Title II or XVI of the Social Security Act is exempt from client participation in service costs.

(b) Before an individual can be provided services other than those listed in DRS policy, the counselor must evaluate the client's financial situation to determine if the client must participate in the cost of services, and if so, the amount of such participation. Any client whose available family ~~resources~~income~~exceed~~exceeds the applicable basic living requirement is required to apply the monthly surplus to the cost of services during each 30 day period services are provided. DVR and ~~DVS~~DVRBVI funds will not be used to purchase services based on client's financial status when there is any refusal on client's behalf to participate in the cost of services. However, the client can be provided services not based on financial status. Any client who does not have a surplus is not required to participate in the cost of services. Financial status does not exempt the client from required use of comparable benefits. If a payment is required of the client, it will be made to the vendor.

(c) The counselor will re-evaluate the client's financial situation at least annually and any time there is a change in the financial situation of the client or family. The amount

of client participation in cost is based upon the most recent determination of client's financial status at the time the IPE or amendment is written, and is stated in the IPE or amendment.

(d) The client's financial status must be verified when an IPE includes services which require client participation in cost of services. Information used to verify the client's financial status includes such documents as income tax returns, bank statements, pay stubs, canceled checks, payment receipts, and/or payroll documents. It is the client's responsibility to provide the documents needed for verification of financial status information for the family. If the client refuses to provide the requested verification, DVR and ~~DVS~~DVRBVI resources will not be used to defray the cost of services which require client participation in cost of services.

612:10-3-4. Services exempt from client participation in service costs

(a) DVR and ~~DVS~~DVRBVI clients who have income and assets above the basic living requirements will be required to apply surplus resources to the cost of rehabilitation services except for the following services which do not require a determination of financial status:

(1) services provided to assess eligibility and rehabilitation needs (services which would require the individual's participation in cost under an IPE will also require the individual's participation in cost during an evaluation of the individual's ability to benefit from VR services);

(2) counseling, guidance, referral, and other services provided directly by DVR and ~~DVS~~DVRBVI staff;

(3) on-the-job training;

(4) personal or work-adjustment training;

(5) reader services;

(6) interpreter services;

(7) personal assistance services;

(8) job-related services including job search and placement, job retention services, follow-up services and follow-along services;

(9) compensatory training;

(10) job coaching services (i.e., supported employment, employment and retention, transitional employment); ~~or~~

(11) any auxiliary aid or service that an individual with a disability requires under Section 504 of the Rehabilitation Act or the Americans with Disabilities Act, or regulations implementing those laws, in order for the individual to participate in the VR program; and

(~~11~~12) library services.

(b) Recipients of Social Security benefits under Titles II (federal old age, survivors, and disability insurance benefits) or XVI (SSI) of the Social Security Act do not have to participate financially in the cost of their rehabilitation program.

612:10-3-5. Basic living requirements

(a) A basic living requirement has been established for different size family groups. A family member is an individual who is a relative or guardian of an applicant or eligible individual. Basic living requirements are based on ~~2~~400% of the Federal poverty level adjusted annually for family size. The standard is intended to cover only the necessities of food, shelter, utilities, clothing, transportation, and incidentals to give the counselor some criteria by which to measure the financial status of a client. To qualify as independent from the family group, the client must meet one of the following criteria:

(1) Beneficiary of Titles II (federal old age, survivors, and disability insurance benefits) or XVI (SSI);

(2) At least 24 years of age and single;

(3) A ward of the court and in custody of DHS;

(4) Married and maintaining a separate household;

(5) Meets the criteria for temporary housing as described in 612:10-3-5(c) or;

(6) The counselor verifies the client has the financial resources to demonstrate self-sufficiency and the client declares no family contributions are available.

(b) Verification of family membership should be based upon whatever available information most accurately documents family membership according to the definition given in this ~~Subsection~~rule. Examples of acceptable verification include the latest Federal income tax return, payroll information, insurance policies, client report, and/or counselor observation.

(c) An eligible individual whose disability has resulted in the need to live with family or friends, and as appropriate the individual's spouse and dependent children, will be considered as a separate household regardless of living arrangements.

612:10-3-6. Income~~, Assets~~ and Liabilities

Determination of income~~, assets~~ and liabilities will be verified and documented by the counselor in the case recording when services in the IPE and amendments require client participation in cost. If the individual refuses to provide the requested information, DRS resources will not be used to purchase services which require client participation in cost of the services.

(1) **Income.**

(A) Income generated from salaried wages will be calculated by gross earnings minus federal taxes, state taxes and social security deductions.

(B) Income generated from business or profession will be calculated by adjusted gross minus additional federal and state taxes divided by 12 to determine a monthly amount.

(C) Income received from unearned sources, such as pensions, public assistance, interest, dividends, royalties, trust fund, or money payments of any kind will be counted. Educational grants, stipends, or loans will not be included in the calculation. If a yearly income is available, it will be divided by 12 to calculate a monthly amount.

~~(2) **Assets.**~~

~~(A) Liquid assets such as money, bonds, savings accounts, available trust funds, certificate of deposits and other available cash resources will be calculated toward the agency's resource allowable amount and any surplus will be divided by 12 and added to the monthly income.~~

~~(B) Material assets:~~

~~(i) Any vehicles or boats used for the primary purpose of recreation are to be counted as an asset. The client is responsible for furnishing verification of fair market value from a reputable source.~~

~~(ii) A client's home and contiguous property will be exempt The client is responsible for furnishing verification of fair market value from a reputable source.~~

(~~3~~2) **Liabilities.** When the client is making~~ regular monthly~~ payments on any areas of liability listed below, payments will be itemized. If~~ regular~~ payments are not being made on a debt, an expense cannot be shown for this item.

(A) **Medical.** ~~Regular monthly out~~Out-of-pocket medical payments not covered by insurance, including medication and supplies, can be used as a medical expense. Monthly premiums for health insurance can be included.

(B) **Disability related expenses.** Disability related expenses beyond the basic living requirements may be considered, if not funded by DRS.

(C) **Other.** Court order commitments, including child support, can be counted as a~~ monthly~~ liability.

(D) **Education expenses.** Costs for any family member incurred only for tuition, books, and fees, toward post-secondary educational expenses, not included in the IPE or paid by grants, scholarships, fee waivers, etc., can be counted as a~~ monthly~~ liability. Only the amount of the ~~monthly~~ payments can be counted as a liability.

SUBCHAPTER 7. VOCATIONAL REHABILITATION AND ~~VISUAL SERVICES~~ VOCATIONAL REHABILITATION FOR THE BLIND & VISUALLY IMPAIRED

PART 1. SCOPE OF VOCATIONAL REHABILITATION AND ~~VISUAL SERVICES~~ VOCATIONAL REHABILITATION FOR THE BLIND & VISUALLY IMPAIRED

612:10-7-1. Overview of Vocational Rehabilitation and ~~Visual Services~~Vocational Rehabilitation for the Blind & Visually Impaired

(a) Vocational rehabilitation services are provided by the Division of Vocational Rehabilitation and the Division of ~~Visual Services~~Vocational Rehabilitation for the Blind & Visually Impaired to help eligible individuals achieve employment outcomes that are consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of each eligible individual. To the maximum extent appropriate, VR services are meant to result in competitive employment in an integrated setting. Vocational rehabilitation services include services for individuals and services to groups of individuals.

(b) Vocational rehabilitation services for an individual are prescribed in an Individualized Plan for Employment (IPE) that is based on an assessment of the individual's rehabilitation needs, guidance provided by a qualified vocational rehabilitation professional and the individual's informed choice with regard to employment goal, services and service providers. Services may include but are not limited to:

(1) an assessment for determining eligibility and vocational rehabilitation needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology;

(2) counseling and guidance, including information and support services to assist an individual in exercising informed choice;

(3) referral and other services to secure needed services from other agencies through cooperative agreements if such services are not available from DVR or ~~DVS~~DVRBVI;

(4) job-related services, including job search and placement assistance, job retention services, ongoing services, and extended services;

(5) vocational and other training services, including the provision of personal and vocational adjustment services, books, tools, and other training materials;

(6) to the extent that financial support is not readily available from a source (such as health insurance or comparable services and benefits) other than DVR or ~~DVS~~DVRVBI, diagnosis and treatment of physical and mental impairments;

(7) maintenance for additional costs incurred while participating in an assessment for determining eligibility and vocational rehabilitation needs or while receiving services under an Individualized Plan for Employment;

(8) transportation, including training in the use of public transportation vehicles and systems, that is provided in connection with the provision of any other service described in this section and needed by the individual to participate in rehabilitation services or to achieve an employment outcome;

(9) on-the-job or other related personal assistance services provided while an individual is receiving other services described in this section;

(10) interpreter services provided by qualified personnel for individuals who are deaf or hard of hearing, and reader services for individuals who are determined to be blind;

(11) rehabilitation teaching services, and orientation and mobility services, for individuals who are blind;

(12) occupational licenses, tools, equipment, and initial stocks and supplies;

(13) technical assistance and other consultation services to conduct market analyses, develop business plans, and otherwise provide resources, to the extent such resources are authorized to be provided through the statewide workforce investment system, to eligible individuals who are pursuing self-employment or telecommuting or establishing a small business operation as an employment outcome;

(14) rehabilitation technology, including rehabilitation engineering, assistive technology devices and assistive technology services;

(15) transition services for students with disabilities, that facilitate the achievement of the employment outcome identified in the Individualized Plan for Employment;

(16) supported employment services for individuals with the most significant disabilities that need ongoing support services from a job coach to obtain and maintain employment;

(17) employment and retention services for individuals with significant disabilities who require short term job coach support to obtain and maintain a successful employment outcome;

(18) transitional employment services for individuals with the most significant disabilities due to mental illness who have little or no successful work history and need work adjustment/trial work experience;

(19) job placement services for individuals with disabilities who are job ready;

(20) services to the family of an individual with a disability necessary to assist the individual to achieve an employment outcome; and

(21) specific post-employment services necessary to assist an individual with a disability to, retain, regain, or advance in employment.

(c) Vocational rehabilitation services for groups of individuals with disabilities are described in 34 CFR 361.49 and include:

(1) in the case of any type of small business operated by individuals with significant disabilities the operation of which can be improved by management services and supervision provided by DVR or ~~DVS~~DVRBVI, the provision of such services and supervision, along or together with the acquisition by DVR or ~~DVS~~DVRBVI of vending facilities or other equipment and initial stocks and supplies;

(2) services that contribute to the rehabilitation of a group of individuals but are not related directly to an individualized plan for employment of any one individual with a disability;

(3) the use of telecommunications systems (including telephone, television, satellite, radio, and other similar systems) that have the potential for substantially improving delivery methods of activities described in this section and developing appropriate programming to meet the particular needs of individuals with disabilities;

(4) special services to provide access to information for individuals who are blind, visually impaired, deaf, hard of hearing or deaf-blind including:

(A) the use of telecommunications, Braille, sound recordings, or other appropriate media;

(B) captioned television, films, or video cassettes for individuals who are deaf or hard of hearing;

(C) tactile materials for individuals who are deaf-blind; and

(D) other special services that provide information through tactile, vibratory, auditory, and visual media.

(5) technical assistance and support services to businesses that are not subject to Title I of the Americans with Disabilities Act of 1990 [42 USC 12111 et seq.] and that are seeking to employ individuals with disabilities; and

(6) consultative and technical assistance services to assist educational agencies in planning for the transition of students with disabilities from school to post-school activities, including employment.

612:10-7-2. Field staff responsibilities

(a) The counselor is responsible for contacting each referral within 30 days of receipt of the referral information. The counselor is responsible for completing a contact by telephone or in person. The counselor is responsible for providing interpreter services to applicants who are deaf or non-English speaking.

(b) The rehabilitation counselor is responsible for the determination of an individual's eligibility to receive services from DVR or ~~DVS~~DVRBVI. In cases where the counselor has difficulty in making an eligibility determination, the counselor will consult with the supervisor. For further clarification, the case will be reviewed by the field coordinator for a decision. Individuals who are legally blind are to be referred to the appropriate rehabilitation teacher for determination of eligibility for the rehabilitation teaching program.

(c) The counselor's primary vocational rehabilitation service is counseling and guidance with job placement. Additional services must be justified as necessary to compensate for, correct or circumvent an impediment to employment. Every IPE must include a plan of counseling and guidance services. Regular documentation of counseling sessions will be included in every DVR and ~~DVS~~DVRBVI case.

(d) The rehabilitation counselor is to ensure that the client is a full participant in the decisions that are made concerning his or her vocational rehabilitation. This responsibility is carried out by providing the individual with as much relevant information as is available so that the individual, and/or the individual's authorized representative, can exercise informed choice consistent with the Department's policies. The minimum information concerning service choice to be supplied includes:

(1) service cost;

(2) available service providers;

(3) service accessibility;

(4) expected duration of services;

(5) consumer satisfaction with the services in question, to the extent that such information is available;

(6) qualifications of potential service providers;

(7) the types of services offered by the potential service providers;

(8) the degree to which services are provided in integrated settings; and

(9) outcomes achieved by individuals working with the service provider, to the extent such information is available.

(e) The individual will be notified in writing of any adverse determination made by professional staff concerning that individual's case. This notification will be made in a timely

manner, and in a manner that supports the individual's right to due process.

(f) The counselor will complete a financial status determination form prior to the provision of any service (other than exempt services listed in 612:10-3-4) to determine if the client will be required to participate in the cost of services.

(g) The counselor will inform each individual of his or her rights and responsibilities as an applicant or client of DVR and ~~DVS~~DVRBVI. Cross reference 612:10-7-3

(h) The Department of Rehabilitation Services (DRS) has an obligation under state and federal law to provide services in a fair and impartial manner. State Ethics Commission Rules state that the proper operation of state government requires that the state employee be independent and impartial; that state employees not use state office to obtain private benefits; that a state employee must avoid action which creates the appearance of using state office to obtain a private or inappropriate benefit; and that state employees exercise their powers without prejudice or favoritism.

(i) The counselor is limited in determining eligibility for services for friends or relatives. At the time of application or referral, if in the counselor's judgment, the individual is familiar to the point of friendship, the counselor must immediately disclose this relationship to their supervisor in writing and obtain approval before determining eligibility. If the applicant is related by blood or marriage, the counselor must immediately refer the case to another counselor, if available. If no other counselor is available, the counselor must notify their supervisor immediately for appropriate case assignment. The counselor should also disclose the potential conflict of interest to the applicant and explain the reason for the potential delay of eligibility determination. The counselor must not only be impartial in the determination of eligibility but also act so that there can be no question of impartiality. The technician must also disclose to the counselor any relationship with the applicant that might create a conflict of interest. The counselor will then contact the Program Manager to see if the case can be worked without partiality or transferred to another counselor.

612:10-7-3. Client responsibilities

To make the rehabilitation effort a success, the individual and agency's staff must work together to reach chosen goals. This shared responsibility requires that the client or applicant for services accept the basic responsibilities in (1) through (12) of this Subsection. Other specific client responsibilities are stated in relevant manual sections. It is the counselor's responsibility to fully and appropriately inform the client of client responsibilities.

(1) Provide information and be available to complete the assessment process to find out if you are eligible for services.

(2) Be on time and keep appointments with DVR/~~DVS~~DVRBVI staff, doctors and others. Call in advance or as soon as possible, if you cannot come to an appointment.

(3) Follow the advice of doctors and other medical professionals.

(4) Participate with your DVR/~~DVS~~DVRBVI counselor in developing the Individualized Plan for Employment, (IPE) including participating in assessments needed to determine your needs and strengths.

(5) Provide enrollment documents to home/supervisor counselor before the college or university's designated "Drop and Add" deadline so an authorization can be issued, if your IPE includes educational and training services.

(6) Attend education or training classes on a regular basis and make at least passing grades, if your IPE includes these services.

(7) Review your IPE with your counselor at least once a year and participate in making revisions to the plan when needed.

(8) Maintain satisfactory progress toward completing the IPE.

(9) Abstain from abuse of drugs and/or alcohol. Individuals who abuse drugs and/or alcohol while receiving services will be referred to the Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS) and/or other appropriate agencies for purposes of seeking treatment. All case services will be suspended. If the client refuses or fails to cooperate with seeking treatment, or is not available to pursue a DRS program, this will be considered as reasonable cause for case closure.

(10) Keep the appropriate professional informed of changes in the individual's address, financial status, or other program-related changes.

(11) Apply for and make appropriate use of any comparable benefits and services for which the client is eligible to defray in whole or in part the cost of services in the individual's IPE and provide verification of financial aid award status to counselor.

(12) Work with the counselor to obtain or keep suitable gainful employment or appropriate independent living outcomes as services are being completed.

PART 3. CASE PROCESSING REQUIREMENTS

612:10-7-21.1. Processing incoming referrals

(a) **Processing incoming referrals.** All referrals to DVR and ~~DVS~~DVRBVI will be contacted by the VR counselor and appropriate action taken within 30 days, after receipt of the referral information. The counselor is responsible for completing a contact by telephone or in person. The counselor is responsible for providing interpreter services to referrals who are deaf or non-English speaking. In situations where the individual cannot be personally contacted, correspondence will be mailed to the individual for informational purposes.

(b) **Referrals to rehabilitation teachers.** All individuals who are legally blind, whether being served by a DVR counselor or a ~~DVS~~DVRBVI counselor, will be referred to a rehabilitation teacher.

612:10-7-21.2. Information and referral system

(a) DVR and ~~DVS~~DVRBVI staff will ensure that individuals with disabilities, including eligible individuals who do not meet order of selection criteria when the agency is operating under an order of selection, are provided accurate vocational rehabilitation information and guidance, using appropriate modes of communication. This information and guidance will be used to assist the individual in preparing for, securing, retaining, or regaining employment.

(b) Staff will ensure that individuals with disabilities are appropriately referred to Federal and State programs, including other components of the workforce investment system. An appropriate referral shall:

(1) be to the Federal or State program(s) best suited to address the specific employment needs of the individual; and

(2) include, for each involved program, provision to the individual of:

(A) a notice of the referral from DVR or ~~DVS~~DVRBVI to the agency responsible for the program;

(B) information identifying a specific point of contact within the agency responsible for the program; and

(C) information and advice regarding the most suitable services to assist the individual

612:10-7-24.1. Basic eligibility requirements for vocational rehabilitation services

(a) An individual is eligible for vocational rehabilitation services under the Rehabilitation Act through the State Department of Rehabilitation Services if the individual:

(1) has a physical or mental impairment which for such individual constitutes or results in a substantial impediment to employment;

(2) is determined by a qualified vocational rehabilitation counselor to require vocational rehabilitation services to prepare for, enter, engage in, or retain gainful employment; and

(3) can benefit in terms of an employment outcome from vocational rehabilitation services.

(b) The agency presumes that an applicant with a physical or mental impairment that constitutes or results in a substantial impediment to employment can benefit from vocational rehabilitation services in terms of an employment outcome, unless the agency demonstrates, based on clear and convincing evidence, that the individual is incapable of benefiting from rehabilitation services due to the severity of the individual's disability.

(c) An individual who has a disability or is blind as determined pursuant to Titles II (federal old age, survivors, and disability insurance benefits) or XVI (SSI) shall be:

(1) considered to have a significant disability under the order of selection; and

(2) presumed to be eligible for vocational rehabilitation services, (provided that the individual intends to achieve an employment outcome consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual) unless clear and convincing evidence demonstrates that the individual is incapable of benefiting in terms of an employment outcome from vocational rehabilitation services due to the severity of the individual's disability.

(d) Eligibility requirements shall be applied without regard to:

(1) duration of residence in the state,

(2) type of disability,

(3) age, except that in serving eligible individuals below working age, the client must be expected to reach working age by the time the IPE is completed, and DRS will not provide services that are the responsibility of the public school system.

(4) gender, race, color or national origin,

(5) type of expected employment outcome,

(6) source of referral, or

(7) the particular service needs or anticipated cost of services required by an applicant or applicant's family.

(e) **Disabled veterans.** Disabled veterans are eligible for vocational rehabilitation services on the same basis as other individuals with disabilities subject to the following restrictions:

(1) Disabled veterans are not provided services which can be secured from the Veterans Administration (VA), unless use of VA services will cause a substantial delay of services.

(2) Veterans receiving additional benefits under the G. I. Bill or the War Orphan Act may be provided services if such services do not duplicate those being received from the VA.

(f) **Applicants who are employed.** Employed persons who meet basic eligibility requirements may be provided vocational rehabilitation services when the employment is not consistent with the individual's strengths, resources, priorities, concerns, abilities, interests and capabilities.

(g) **Citizenship.** Participation in the VR program is available to citizens and nationals of the United States, lawfully admitted permanent resident aliens, refugees, asylees and parolees, and other immigrants authorized to work in the United States.

(h) **Criteria.** Some conditions have unique criteria that must be considered when determining eligibility.

(1) **Alcoholism/Drugs.** Individuals may be eligible for vocational rehabilitation services based on a substance abuse diagnosis that may be made by a psychiatrist, psychologist, medical doctor or certified substance abuse counselor. Clients must be willing to undergo random alcohol/drug screening. DRS does not pay for detoxification or replacement drug treatment. Documentation from qualified Drug and Alcohol treatment professionals indicating that the client is presently substance-free, maintaining sobriety, and actively participating in a treatment or maintenance program if recommended by the treating professional must be filed in the case record upon IPE development.

(2) **Allergies/Asthma.** Allergies/asthmatic conditions that require continuous or intermittent medical intervention and result in a substantial impediment to employment will be considered eligible for services.

(3) **Deafness and Hearing Loss.** The rehabilitation professional will base eligibility determination upon one of the measurement methods listed below. The case record must document the method chosen provides the most accurate evaluation of functional hearing level for the individual.

(A) **Eligibility criteria.** Eligibility criteria for each method of measurement are listed in (i) through (iv) of this Subsection. An individual will also be considered to have a qualifying disability when documentation indicates the hearing loss is progressive and the progression is substantial enough to result in an impediment to employment.

(i) **Average hearing loss.** Average hearing loss, which is determined by computing average of the pure tone thresholds for each ear at 1000Hz, 2000Hz, 3000Hz and 4000Hz. An individual is considered to have a qualifying disability based upon average hearing loss when:

(I) The hearing loss in one ear is profound (91 dB or greater) and the hearing loss in the better ear is at least 15 dB; or

(II) The hearing loss in the better ear is 30 dB or greater.

(ii) **Speech recognition threshold (SRT).** An individual is considered to have a qualifying disability when:

(I) the speech reception threshold in one ear is 91 dB or greater and is at least 15 dB in the better ear; or

(II) the speech reception threshold in the better ear is 30 dB or greater.

(iii) **Speech discrimination or word recognition score.** An individual is considered to have a qualifying disability when the speech discrimination or word recognition score is 70% or less.

(iv) **Articulation index.** An individual is considered to have a qualifying disability when the articulation index is 70% or less.

(B) **Severity of Hearing Loss.** All individuals who qualify as having a severe hearing loss will be referred to a Rehabilitation Counselor for the Deaf and Hard of Hearing (RCD). Relevant information provided will include copies of the initial interview narrative recording, medical information, eligibility data entry form, Individualized Plan for Employment, pertinent copies of case narratives and DRS application form. On receipt of a referral, the RCD will contact the client and make a determination of potential for Deaf and Hard of Hearing services. The referring counselor will be informed in writing of the RCD's findings.

(i) **Severe Hearing Loss.** Average hearing loss, as calculated above, is considered severe when:

(I) The hearing loss in one ear is profound (91 dB or greater) and the hearing loss in the better ear is at least 31 dB; or

(II) The hearing loss in each ear is 55 dB or greater.

(ii) **Severe Speech Recognition Threshold (SRT).** An individual is considered to have severe disability when;

(I) The SRT in one ear is 91 dB or greater and the SRT in the better ear is at least 31 dB; or

(II) The SRT in each ear is 55 dB or greater.

(iii) **Severe Speech Discrimination or word recognition score.** An individual is considered to have a severe disability when the speech discrimination or word recognition score is 59% or less.

(4) **Diabetes** The individual must require prescribed medication to control the condition. Those persons whose diabetes is controlled by diet and exercise alone or whose condition does not result in a substantial impediment to employment will not be considered eligible. Eligible clients will be required to undergo a visual exam by a licensed ophthalmologist at least once a year. ~~All insulin dependent diabetics are required to attend diabetic education training as part of their IPE.~~ All diabetics will need to complete a knowledge survey regarding current best practices for the management of diabetes. Should the knowledge survey identify significant need for diabetes training, the training will be incorporated into the IPE. ~~This can be provided by a consumer's personal physician, in coordination with the VR specialist. If diabetic education is provided, a separate intermediate objective addressing this service must be included on the IPE.~~

(5) **Facial and Disfigurement Conditions.** When these conditions result in an impediment to employment an individual may be eligible for VR services.

(6) **Learning Disabilities.** An individual may be identified as learning disabled:

(A) When there is a marked discrepancy between verbal and performance intellectual level or

(B) When the individual's achievement on individually administered, standardized tests in reading, mathematics or written expression is substantially below that expected for age, schooling and level of intelligence (DSM IV).

(7) **Mental Disorders.** Treatment must be incorporated as a service in the IPE for individuals with a mental disorder.

(8) **Intellectual Disability.** To be eligible, individuals having an I.Q. of 69 or below and substantially limited adaptive functioning, as measured by an individual intelligence test, will be considered to have a substantial disability. Individuals eligible under IDEA with an I.Q. level higher than 69 may be considered to have a substantial impairment provided the documentation used by the

school in determining eligibility under IDEA, in the counselor's judgment, confirms the individual is functioning in the intellectual disability range of ability. Individuals not enrolled in public school special education classes with an I.Q. higher than 69 may be considered to have a substantial impairment provided appropriate documentation confirms the individual is functioning in the intellectual disability range of ability.

(9) **Height.** To be eligible, a person's stature must constitute or result in a substantial impediment to employment.

(10) **Obesity.** To be eligible, a person must be considered obese according to a recognized medical classification protocol and the impairment must constitute or result in a substantial impediment to employment. Some type of weight loss plan or treatment for obesity must be included as a service in the IPE.

(11) **Visual.** The individual must be found to have at least a 25% loss of total visual efficiency with best correction, or there must be evidence the condition is progressive and will soon reach the visual loss described above. "Best correction" refers to the use of standard eyeglasses or contact lenses, and does not include use of bioptic telescopic systems or any specialized lenses which cannot be worn by the individual on a sustained basis. Any one or all of the following factors may be used to determine whether a 25% loss of total efficiency exists.

(A) **Central visual acuity (Snellen method or equivalent).** Acuity of 20/60 or less in the better eye after best correction (in the case of difference of acuity between reading and distance use the greater loss).

(B) **Loss of depth perception or stereopsis.**

(i) **Eligibility on the basis of depth perception loss.** When defining eligibility based on depth perception alone, it is generally accepted a total loss of depth perception would not constitute a 25% loss of visual efficiency. Other factors to consider include: Is the client's loss of depth perception acute? Did the client recently lose his or her depth perception? Did the client's past vocational experience require good depth perception? If the client is currently working, does his/her present vocation require good depth perception? After considering these factors the counselor will determine if there are functional limitations to the extent the individual would be prevented from obtaining, retaining or preparing for employment.

(ii) **Eligibility based on loss of stereopsis.** Stereopsis is defined as the blending into one-picture two images of an object seen from slightly different points of view so as to produce the impression of relief and solidity. This type of loss usually results from suppression of vision in one eye due to alternating exotropia, esotropia, hypertropia or a difference in the refractive power of the two eyes so great that separate images cannot be fused. When determining eligibility based on lack of stereopsis the counselor will take into account most of the factors used in determining eligibility based on loss of depth perception. One major difference is stereopsis cannot be learned. In other words, if an individual does not have binocular vision, it is impossible for the individual to have stereopsis. From a functional standpoint, stereopsis is considerably different from depth perception. The individual can still do many jobs with various degrees of depth perception yet these same jobs may have certain steps that require acute stereopsis. Thus an employee losing the stereopsis part of his visual function would be at risk for injuring himself or other workers or might be considered as a target for termination.

(iii) **Limited peripheral vision.** This is restriction of visual fields by 25% or more as documented by a formal visual field examination. The examination should report the qualitative percentage of visual field loss and/or remaining percentage of visual efficiency.

(iv) **Diplopia (Double Vision).** There are different degrees of double vision. The type of double vision most disabling is the type that manifests itself in the primary direction of gaze.

(v) **Aphakia.** In cases of binocular Aphakia the central visual efficiency of the better eye will be accepted at 75% of its value (25% loss of visual efficiency) and in monocular Aphakia the central visual efficiency will be accepted at 50% of its value (50% loss of visual efficiency). Individuals with intraocular lens implants are not considered to have a visual disability as a result of an aphakic condition.

(vi) **Color deficiency.** When total absence of color discrimination or red-green deficiency exists it will be considered a disability.

(12) **Re-evaluation.** Individuals with chronic disabilities that can be removed with little or no residual limitations will not be eligible for purchase of services other than those related to the required treatment.

612:10-7-24.2. Assessment for determining eligibility

(a) To determine whether an individual is eligible for vocational rehabilitation services:

(1) the counselor will use to the maximum extent possible and appropriate existing data including counselor observations, education records, information provided by the individual or the individual's family, and determinations made by officials of other agencies; and

(2) to the extent necessary provide appropriate assessments, including provision of goods and services during the assessment, to obtain additional documentation necessary to make the determination of eligibility and priority group assignment. The counselor will carefully evaluate the need to provide assistive technology devices and services or worksite assessments.

(b) The counselor will determine whether an individual is eligible for vocational rehabilitation services within a reasonable

period of time, not to exceed 60 days after the individual has submitted an application for services. This time period may be extended only when unforeseen and exceptional circumstances beyond the control of the Department preclude completing the determination of eligibility within the 60 days and the individual agrees a specific extension of time is warranted as documented on the Need for Extension of Time to Determine Eligibility form; or a trial work period or an extended evaluation is needed to determine the individual's ability to benefit from VR services.

(c) Documentation that the individual has a disability which constitutes or results in an impediment to employment must come from qualified professionals.

(d) Applicants who have been determined eligible for vocational rehabilitation services by an American Indian Vocational Rehabilitation program are deemed to be eligible for services through DRS. After making the determination of eligibility the VR counselor may authorize assessments and services needed to further document eligibility, assign priority group and develop the IPE, making maximum use of diagnostic documentation and other data provided by the American Indian VR program.

(e) A qualified rehabilitation professional may proceed with a determination of eligibility if there is an obvious and/or observable disability that results in an impediment to employment. The VR specialist will document observations pertaining to the applicant's disability. After making the determination of eligibility the VR specialist may authorize any assessments and services necessary to further document eligibility, establish priority group placement and determine rehabilitation needs for development of the Individualized Plan for Employment.

(f) Diagnosis and evaluation are to be provided only for determination of eligibility for VR services, priority group placement, and determination of VR service needs. DVR and ~~DVS~~DVRBVI funds are not to be used to assist an individual in establishing eligibility for other programs.

(g) When necessary, diagnostic evaluations may be purchased at any time during the life of the case.

(h) If an individual is determined eligible, the VR counselor will notify the individual in writing. If the individual is determined to be ineligible, the counselor will notify the applicant and provide information on further options in accordance with DRS policy on ineligibility decisions.

(i) **Eligibility for supported employment.** The counselor may not find an individual ineligible for supported employment services because a resource for providing extended services cannot be identified. In this instance, the counselor will:

(1) accept the individual as eligible for VR services;

(2) plan VR services as appropriate, including the expected availability of extended services; and

(3) seek out and/or help in developing the needed extended services resource.

612:10-7-24.3. Trial Work Experience and Extended Evaluation

(a) **Use of trial work experience and extended evaluation.** It shall be presumed that an individual can benefit in terms of an employment outcome from vocational rehabilitation services unless clear and convincing evidence demonstrates that the individual is incapable of benefiting in terms of an employment outcome due to the severity of the individual's disability. In making such demonstration, the VR Counselor will explore the individual's capabilities to perform in work settings through the use of trial work experiences with appropriate supports, except under limited circumstances when an individual cannot take advantage of such experiences and extended evaluation may be utilized.

(b) **Trial work.** The trial work experience shall be provided in the most integrated setting possible, consistent with the individual's informed choice and rehabilitation needs, and shall be of sufficient variety and duration to determine the eligibility of the individual or to determine the existence of clear and convincing evidence that the individual is incapable of benefiting from VR services in terms of an employment outcome. Cases may not remain in this status more than 18 months. An assessment of the individual's progress is required as frequently as necessary but at least once every 90 days. The assessment will include periodic reports from the institution, facility or person providing the services to determine the results of the provision of such services and to ascertain whether the individual may be determined to be eligible or ineligible. The assessment summary narrative will be recorded in the case file.

(c) **Extended evaluation.** Extended evaluation is available for individuals with the most significant disabilities who cannot take advantage of trial work experiences or if the options for trial work experiences have been exhausted before DVR or ~~DVS~~DVRBVI is able to conclude whether the applicant is able to benefit from vocational rehabilitation services or incapable of benefiting from VR services in terms of an employment outcome due to the severity of the disability. Trial work experiences remain the first option by which to assess an individual's ability to benefit from VR service. Extended evaluation is not meant to be a routine alternative to trial work experiences, but is to be used only as a last resort and under limited circumstances. An individual may be determined unable to take advantage of a trial work experience if there is a need for substantial restoration services prior to entering a work environment. Extended evaluation involves the development of a written plan which provides only those services necessary to make a determination of eligibility.

(d) **Case recording requirements.** The counselor will document the case record according to the criteria and recording standards in (1) - (5) of this Subsection.

(1) **Justification that a trial work experience or an extended evaluation is required.** It is presumed that an individual can benefit in terms of an employment outcome from vocational rehabilitation services unless clear and convincing evidence demonstrates otherwise. The use of trial work experiences or extended evaluations is to be limited solely to those extraordinary situations in which the preponderance of evidence obtained in the normal manner is sufficient to challenge the presumption of benefit due to the severity of the disability. Documentation and case recording must clearly support the determination that this

preponderance of evidence exists, and that trial work experience is necessary to make the eligibility determination.

(2) **Written plan for trial work experiences or extended evaluations.** Services related to the trial work experience or extended evaluation will be planned by the counselor and individual, or the individual's authorized representative. The trial work experience or extended evaluation plan will describe the services necessary to obtain clear and convincing evidence concerning the presumption of benefit.

(3) **Termination of trial work experience or extended evaluation - eligible.** When an individual is determined to be eligible for services, the case is processed in accordance with DRS policy.

(4) **Termination of trial work experience or extended evaluation - ineligible.** If the trial work experience or extended evaluation provides clear and convincing evidence that the individual cannot benefit from vocational rehabilitation services in terms of an employment outcome due to the severity of the disability, the case may be closed as ineligible in accordance with DRS policy. In addition to explaining the individual's right to a review of the determination and the availability of the Client Assistance Program, the counselor will make referrals to other agencies, facilities, or programs as may be appropriate.

(5) **Amendments.** An amendment to the plan is made stating all new decisions, facts, and planned services not already covered in the original trial work experience or extended evaluation plan.

612:10-7-25.1. Order of selection

(a) **Need for order of selection.** The Department, in consultation with the Oklahoma Rehabilitation Council, has determined, due to budgetary constraints or other reasoned limitations, that it cannot serve all individuals who are determined eligible for DVR and ~~DVS~~DVRBVI services. The Department consults with the Oklahoma Rehabilitation Council regarding the:

(1) need to establish an order of selection, including any re-evaluation of the need;

(2) priority categories of the particular order of selection;

(3) criteria for determining individuals with the most significant disabilities; and

(4) administration of the order of selection.

(b) **Priority groups.** It is the policy of DRS to provide vocational rehabilitation services to eligible individuals under an order of selection. Under the order of selection, the Department has established three priority groups on the basis of serving first those with the most significant disabilities. Every individual determined to be eligible for DVR and ~~DVS~~DVRBVI services is placed in the appropriate priority group based upon the documentation used to determine eligibility and/or vocational rehabilitation needs. Selection and placement in a priority group is based solely upon the significance of the eligible individual's disability, and is not based upon the type of disability, geographical area in which the individual lives, projected type of vocational outcome, age, sex, race, color, creed, religion, or national origin of the individual. The priority groups are:

(1) **Priority Group 1.** Eligible individuals with the most significant barrier to employment. A most significant barrier is one that includes a mental or physical disability resulting in serious limitations in three or more functional capacities and can be expected to require multiple services over an extended period of time.

(2) **Priority Group 2.** Eligible individuals with significant barriers resulting in serious limitations in at least one, but not more than, two functional capacities and can be expected to require multiple services over an extended period of time.

(3) **Priority Group 3.** Eligible individuals with disabilities not meeting the definition of individual with a significant barrier.

(c) **Implementation.** Prior to the start of each fiscal quarter, or when circumstances require, the DRS Director will determine in which priority groups new Individualized Plans for Employment will be written and initiated. The Director may restrict the writing and initiation of new Individualized Plans for Employment within a priority group to cases having eligibility dates falling on or before a specified date providing that all consumers in higher priority groups are being served. Considerations in making this determination will include, but not be limited to, the projected outcomes, service goals, expenditures, and resources available for each priority group. Projected costs and resources for each priority group will be based upon costs of current Individualized Plans for Employment, anticipated referrals, availability of financial resources, and adequacy of staffing levels. The Director will implement actions under the order of selection through written notice to DVR and ~~DVS~~DVRBVI staff. The written notice will specify the implementation date of the action and direct DVR and ~~DVS~~DVRBVI staff on how to handle cases by priority group and application date. DVR and ~~DVS~~DVRBVI staff will inform each eligible individual on their caseloads:

(1) of the priority groups in the order of selection;

(2) of the individual's assignment to a priority group; and

(3) of the individual's right to appeal that assignment.

(d) **Closing and opening priority groups.** When all or part of a priority group is closed, designated cases within that priority group without a written IPE will be placed on a waiting list after the individual has been determined to be eligible. No IPE will be written for cases on the waiting list. Staff will continue to take applications, diagnose and evaluate all applicants to determine eligibility and vocational rehabilitation needs, find the individual eligible when documentation supports such a decision, then place each eligible individual's case in the appropriate priority group. If an eligible individual is placed in a closed priority group, his or her case will go on the waiting list and no IPE will be written or initiated. The DRS Director will notify DVR and ~~DVS~~DVRBVI staff in writing when all or part of a closed priority group is opened. When this directive includes new applicants who are found eligible, individuals already on the waiting list within that same priority group will be given priority over new applicants. When all or part of closed

priority groups are opened, staff will contact individuals on the waiting list to develop and implement their Individualized Plans for Employment using the priorities in Paragraphs (1) - (3) of this Subsection:

(1) contact individuals within the highest open priority group first, Most Significant being the highest of all priority groups;

(2) within each opened priority group, staff will contact individuals on the waiting list in order of application date, earliest application date first; then

(3) staff will contact individuals whose cases will remain on the waiting list to explain how their cases will be handled.

(e) **Continuity of services.** Any individual with an IPE that existed prior to the date all or part of that individual's priority group was closed will continue to receive services as planned. Such an IPE may be amended if the changes are necessary for the individual to continue progress toward achieving an appropriate employment outcome, or are otherwise necessary within policy. Persons requiring post employment services will also be provided the necessary services regardless of priority group assignment.

(f) **Information and referral services.** Information and referral services will remain available to eligible individuals who are not in an open priority group. These individuals will be given information and guidance, using appropriate modes of communication, to assist such individuals in preparing for, securing, retaining or regaining employment, and will be appropriately referred to Federal and State programs (other than the vocational rehabilitation program) including other components of the statewide workforce investment system in the state. No IPE will be written to provide such services to these individuals.

612:10-7-31. Transfer of cases

(a) **Transfer of cases between caseloads.** When it has been determined an individual has moved from one counselor's area to another, the individual could be served more appropriately under another DVR or ~~DVS~~DVRBVI program, or in the supervisor's opinion, transfer is in the best interest of the individual, the case will be transferred.

(b) **Transfer of cases between programs.** Prior to transferring a case between DVR and ~~DVS~~DVRBVI, the transferring counselor must obtain the required specialist information to support the change of primary disability.

PART 5. CASE STATUS AND CLASSIFICATION SYSTEM

612:10-7-50. Eligibility Status

(a) **Use of Eligibility Status.** An active case is defined as one which has been accepted as meeting the basic eligibility requirements. An applicant who has been determined eligible for vocational rehabilitation will be placed in Eligibility Status for completion of a comprehensive assessment to determine employment goal and rehabilitation needs and for development of the Individualized Plan for Employment (IPE). An individual who is placed in an order of selection priority group that is not currently being served will be placed on a waiting list and held there pending further directives from the Director concerning opening or closing of priority groups.

(b) **Case recording requirements.** The counselor records activities during this period by individual entry or by summary recording at regular intervals in case narratives. Copies of pertinent case information will be shared with all DVR or ~~DVS~~DVRBVI professionals involved in the case. During eligibility status and throughout the life of the case, ~~DVS~~DVRBVI counselors and rehabilitation teachers will share pertinent information related to a case they jointly serve. Pertinent case information will also be shared with contracted vendors, when appropriate, with a release signed by the client. If an IPE cannot be developed during this period, the client's case is closed with a full explanation to the client and documentation as to the reason for closing the case. This documentation will be completed on a closure letter and a copy given to the client.

612:10-7-51. Individualized Plan for Employment

(a) **Options for developing the Individualized Plan for Employment (IPE).** The VR counselor will provide the eligible individual, or the individual's authorized representative, in writing and in appropriate mode of communication, with information on the individual's options for developing the IPE.

(1) The required information will include the following:

(A) information on the availability of assistance, to the extent determined to be appropriate by the eligible individual, or authorized representative, from a qualified VR counselor in developing all or part of the IPE, and the availability of technical assistance for this purpose;

(B) a description of the required content of the IPE;

(C) as appropriate:

(i) an explanation of agency requirements for client participation in cost of services;

(ii) additional information requested by the individual or authorized representative;

(iii) information on the availability of assistance in completing DVR/~~DVS~~DVRBVI forms required in developing the IPE;

(iv) For cases involving Mental Disorders and Obesity, treatment must be incorporated as a service in the IPE, in accordance with DRS policy.

(D) a copy of a DRS publication addressing client's rights and responsibilities.

(2) For cases in an open priority group, the IPE must be completed and signed as soon as possible, consistent with the needs of the individual, but not more than 90 calendar days following the eligibility determination, unless the individual or the authorized representative and the VR or ~~VS~~VRBVI counselor jointly agree to an extension of time of a specific duration. The 90-day time frame for development of the IPE will be applied from the date a closed priority group is reopened.

(b) **Vocational objective.** The primary purpose in providing vocational rehabilitation services is to assist an eligible

individual obtain appropriate competitive employment in an integrated setting consistent with the individual's informed choice. The choice of a vocational objective for an individual receiving vocational rehabilitation services must be based primarily upon the individual's strengths, resources, priorities, concerns, abilities, interests and capabilities.

(1) **Informed choice.** The vocational objective is to be chosen with the full participation of the client. The client's interests and informed choice determine his or her vocational goal to the extent these factors are consistent with the client's strengths, resources, priorities, concerns, abilities, interests and capabilities.

(2) **External conditions.** Factors such as the local labor market or local economy must also be taken into consideration. However, in most cases these factors cannot be used as the only basis upon which to determine whether a vocational objective is appropriate.

(c) **Non-competitive vocational objectives.** The primary mission of DVR and ~~DVS~~DVRBVI is to help eligible individuals achieve competitive employment in an integrated work setting. Therefore, careful consideration and planning are required when services are to be provided to achieve a long term goal of non-competitive employment.

(1) **Homemaker.** A homemaker is defined as a person whose primary work is performance of duties related to the upkeep and maintenance of a home. This work takes place in the individual's own home, without remuneration.

(A) The IPE can have a vocational objective of homemaker only when services will directly and substantially improve the individual's ability to perform the primary homemaking work activities for their home.

(B) Self-care activities are not sufficient to meet the definition of gainful occupation.

(C) A vocational objective of homemaker can be established for only one person within the same household.

(2) **Unpaid family worker.** A vocational objective of unpaid family worker is appropriate when services will enable the individual to perform work without pay on a family farm or in a family business operated by one or more members of the client's family. The record must document how the services will substantially improve the productivity of the client and his/her contribution to the family farm or business.

(d) **General requirements for the Individualized Plan for Employment.**

(1) The IPE documents the client's chosen employment goal, and the planning of vocational rehabilitation services which are necessary to achieve a successful employment outcome. The client will be a full participant in the development of the IPE or any amendments consistent with Federal and State regulations, laws, and statutes. The eligible individual must be given the opportunity to exercise informed choice in selecting an employment outcome, the specific VR services to be provided under the plan, the service providers, and the methods for service delivery. For cases in an open priority group, the IPE must be agreed to and signed by the eligible individual or authorized representative, approved by a VR counselor and, as appropriate, other administrators employed by DVR or ~~DVS~~DVRBVI within 90 days of determination of eligibility, unless the individual or the authorized representative of the individual and the VR or ~~VS~~VRBVI counselor jointly agree to an extension of time of a specific duration. To the maximum extent possible, the IPE is to be provided in the native language or mode of communication of the individual or, as appropriate, of a parent, family member, guardian, advocate, or authorized representative. It is also required the client receive a copy of the plan and any subsequent amendments.

(2) The IPE is subject to continuous development and change. Substantial changes to the IPE are documented as amendments. A substantial change is broadly defined as any change in the employment objective, or in service needs or available resources not accounted for in the original IPE or existing amendment(s). The amount of any client participation in the cost of a service will be based upon the determination of client's financial status completed at the time the relevant IPE or amendment is written, and is to be stated in the IPE or amendment. If services based upon financial status are included in the original IPE and/or in the amendment, a new Financial Status Determination form will be completed when the IPE is amended. A copy of any Amendment to an Individualized Plan for Employment will be given to the client, or client's authorized representative, as appropriate.

(3) Diagnosis related to eligibility or the IPE can be provided at any time it is necessary during the life of the case.

(4) An IPE is not considered in effect until all required approvals have been obtained in accordance with Department policy.

(5) Plan reviews are comprehensive reviews of the entire IPE. A plan review can be done at any time, but must be done at least annually. The client must be given the opportunity to review the plan and, if necessary, participate in its redevelopment and agree to its terms. A financial status determination will be completed at the time of plan review when the IPE includes services based upon client's financial status.

(e) **Content of the Individualized Plan for Employment.** The Individualized Plan for Employment must include:

(1) a description of the specific employment outcome that is chosen by the client consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the client, and to the maximum extent appropriate, results in competitive employment in an integrated setting, and the estimated timeframe for the achievement of the employment outcome;

(2) a description of the specific VR services that are:

(A) needed to achieve the employment outcome including as appropriate, the provision of assistive

technology services and devices, and personal assistance services, including training in the management of such services;

(B) provided in the most integrated setting that is appropriate for the service involved and is consistent with the informed choice of the client; and

(C) timelines for the achievement of the employment outcome and for the initiation of services.

(3) a description of the service provider chosen by the client or authorized representative, and the methods of services delivery;

(4) a description of the criteria that will be used to evaluate progress toward achieving the employment outcome;

(5) the terms and conditions of the IPE including as appropriate:

(A) the responsibilities of DVR or ~~DVS~~DVRBVI;

(B) the responsibilities of the client, including:

(i) the client's responsibilities for the employment outcome;

(ii) the client's participation in paying the cost of VR services; and

(iii) the client's responsibility to apply for, accept, and use comparable services and benefits to defray in whole or in part the cost of VR services.

(6) for an IPE that includes supported employment services, information identifying:

(A) the extended services needed by the client; and

(B) the source of the extended services, including natural supports, or an explanation concluding there is a reasonable expectation a source will become available; and

(C) the weekly work goal.

(7) if it appears they will be necessary, a statement of needed post-employment services.

PART 9. ACTIONS REQUIRING REVIEW AND APPROVAL

612:10-7-87. Actions requiring supervisor's approval

Actions requiring supervisory approval include:

(1) All actions of a newly employed counselor/teacher.

(2) All IPE's or amendments when the total of the planned DVR and ~~DVS~~DVRBVI expenditures for the entire case exceed $25,000.

(3) All case closures in which an IPE was developed and services initiated.

(4) Transfer of cases from one counselor/teacher caseload to another outside the sending supervisor's unit (signed by the supervisor of the sending counselor or teacher).

(5) All IPE's which include purchase of physical or mental restoration services, prescription drugs or prescribed medical supplies lasting more than three months.

(6) Small Business plans with a cost to the agency in excess of $10,000.00.

(7) Vehicle or home modifications over the DCAM authority order limit and housing modifications involving structural modifications.

(8) Vehicle repairs that exceed $1,000.00 for the life of a case.

(9) Dental services with a projected cost over $5,000.00.

PART 11. PHYSICAL AND MENTAL RESTORATION SERVICES

612:10-7-98. General guidelines for physical and mental restoration services

(a) To the extent that assistance is not readily available from a source other than DVR or ~~DVS~~DVRBVI, diagnosis and treatment of physical and mental impairments may be provided to assist the individual with a disability in preparing for, securing, retaining or regaining employment. Physical or mental restoration services are provided only when the condition is stable, or slowly progressive. A slowly progressive condition is one in which the client's functional capacity is not expected to diminish so rapidly as to prevent successful completion of vocational rehabilitation services, and/or employment for a reasonable period of time. The individual is liable for services he or she arranged which were not planned and initiated under the auspices of DVR and ~~DVS~~DVRBVI. DVR and ~~DVS~~DVRBVI will not pay for hospitalization or treatment occurring prior to initiation of an Individualized Plan for Employment (IPE). DVR and ~~DVS~~DVRBVI will not pay for emergency hospitalization or treatment needed at the time of referral. However, diagnostic examinations or information may be paid from DVR and ~~DVS~~DVRBVI funds for use in eligibility determination, priority group placement, or determination of vocational rehabilitation needs. Physical and/or mental restoration services will be purchased only from licensed or board certified health professionals unless otherwise specified in DRS policy. Payment will be made in accordance with the established fee schedule of the Department.

(b) Temporary conditions with sudden onset do not fall within the definition of impairment for eligibility purposes. Emergency treatment of remediable conditions will not be purchased by DVR and ~~DVS~~DVRBVI except under intercurrent illness policy. When the staff is in doubt as to the effect of such a condition upon the outcome of the IPE objectives, a medical consultation may be requested.

(c) DVR and ~~DVS~~DVRBVI do not provide long-term or ongoing physical or psychological treatment. DVR and ~~DVS~~DVRBVI funds cannot be used to initiate treatment that is reasonably anticipated to last more than three months unless supervisory approval has been obtained for a three month extension. Additional three month extensions may be approved if the client maintains reasonable progress toward achieving the vocational goal. Persons needing long-term or ongoing treatment are to be referred to other medical assistance sources if available.

(d) Payment from DVR and ~~DVS~~DVRBVI funds may be planned and authorized only after applicable third party pay

sources provide verification of the expense they will cover, and not cover, associated with the physical or mental restoration services in question. When DVR and ~~DVS~~DVRBVI funds are used to supplement a third party pay source, planned services and the authorization will be limited to those expenses that fall within the scope of the program and that do not exceed the difference between what the third party pay source will pay and the Department's established payment schedule.

(e) Individuals with chronic disabilities that can be removed with little or no residual limitations will not be eligible for purchase of services other than those related to the required treatment.

(f) Physical and mental restoration services may include but are not limited to:

(1) Braces and orthotic devices.

(2) Chiropractic services. A chiropractor providing treatment must be duly licensed to practice his profession in Oklahoma, have a current provider/vendor agreement with DRS, and following evaluation of the client's needs, must provide a treatment plan with goals, time frames and the estimated number of treatments required to meet the goals. Treatment may not be extended beyond three months unless progress toward treatment goals can be determined.

(3) Dental services. Dental services may be provided to treat or correct dental conditions that constitute an impediment to employment or participation in the rehabilitation process, produce health problems or aggravate an existing disability. Dental services with a projected cost over $5,000.00 require review by the DRS dental consultant and supervisory approval.

(4) Dialysis and treatment for end-stage-renal-disease. DVR and ~~DVS~~DVRBVI may assist with the cost of Medicare deductible, co-insurance, and services not covered by Medicare if documentation states other resources are not available and the client is actively participating in an IPE with treatment as part of the plan. Requests for kidney transplants must be approved by the medical consultant.

(5) Prescription drugs and prescribed medical supplies. Prescription drugs and/or prescribed medical supplies may be purchased when required for proper diagnosis, for post-operative treatment, or to stabilize a documented disability. The need for the drugs and/or medical supplies must be documented in a physician's report. Payment will be made for generic type drugs unless the physician specifically requests a brand name drug.

(6) Hearing aids and audiological services.

(7) Hospitalization when recommended by a physician and the client is to receive medical treatment or surgery. Hospitalization may also be authorized for diagnostic services upon recommendation of a physician.

(8) Treatment for intercurrent illness. Intercurrent illness is an illness or injury which occurs during the course of an individual's vocational rehabilitation and, if not treated, will complicate or significantly delay achievement of the client's employment outcome. DVR and ~~DVS~~DVRBVI will purchase treatment for intercurrent illness or injuries if the client is not covered by health insurance or eligible for comparable services and benefits, or when the provision of services through comparable services and benefits would significantly interrupt or delay treatment for an individual at extreme medical risk, jeopardize a job placement or impair the individual's progress in achieving the planned employment outcome.

(9) Laboratory work and x-rays if required by the physician to complete his examination or in conjunction with diagnosis or treatment.

(10) Low vision services.

(11) Medical examinations, when necessary to determine eligibility, achieve a goal in the IPE or when related to an intercurrent illness.

(12) Nursing services can be provided for a client who is convalescing from physical restoration services if recommended by the doctor of treatment. Either Registered Nurses or Licensed Practical Nurses may be used to provide this service when a current medical vendor agreement is on file with the Department. Volunteers may be used if less technical care is needed and if approved by the client's physician.

(13) Physical and occupational therapy may be provided on either an in-hospital or outpatient basis if recommended by the attending physician.

(14) Post-operative care of cataract patients.

(15) Prosthetic eyes, glasses and other optical aids.

(A) Glasses and other visual aids and services may be prescribed or provided by either an ophthalmologist or an optometrist. Other optical aids recommended by optical aid clinics are purchased upon the recommendation of the specialist(s) in one or more such clinics. Prosthetic eyes are provided, upon the recommendation of an ophthalmologist.

(B) Lenses and frames for glasses purchased by DRS will be authorized at fee schedule prices. The vendor may add a service charge not to exceed the established fee. An additional code and fee may be added for tinting if it has been prescribed by the physician or optometrist that performed the eye examination with written medical/vocational justification.

(C) The fee that has been established for frames will only cover the cost of plain sturdy frames. Clients do not have the option of selecting more expensive frames and paying the difference between the vendor's price and the amount authorized. If the vendor accepts payment from the client or a representative of the client and also files a claim with the Department for the same services, a violation of the Provider Agreement has occurred and the vendor would be subject to sanctions.

(D) If a client selects special frames and has sufficient resources to purchase them, the frames should not be included on the authorization and the client would be responsible for the entire cost of the frames.

(16) Prosthetic limbs.

(A) Prosthetic limbs may be provided if the prosthesis is recommended by a physician. The client

who has successfully worn a prosthesis will not be required to see an orthopedist or physiatrist, or attend an amputee clinic unless some other disorder is apparent.

(B) An individual who has never worn a prosthesis must be seen by a physician before the prosthesis is provided. The client must agree to training in its use. Gait training is considered Personal Adjustment Training and does not require client participation in cost. However, physical therapists providing the training are recognized as medical vendors and require authorizations completed on a Medical Service Authorization.

(C) Persons with multiple amputations must have the special examination and training.

(D) The counselor may authorize for a prescribed standard prosthesis without further review. The choice of prosthesis must be closely related to its intended use in a work setting, or in relation to reasonable independent living goals. Non-standard prostheses (i.e., myoelectric) will not be purchased with DRS funds unless medically justified and/or required for a specific employment, or independent living, outcome. When a prosthesis other than a standard prosthesis is prescribed the counselor will request a consultation from the appropriate medical consultant. Justification for the non-standard prosthesis must be documented in the case record.

(17) Psychiatric and psychological treatment.

(A) Psychotherapy may be provided for emotional conditions which may be expected to respond within a reasonable period of time. Psychotherapy can be provided only by the sources in (1) - (5) of this Subsection.

(i) Psychiatrists certified by the American Board of Psychiatry and Neurology or completed the required training and are "Board Qualified", or who have spent a major portion of their time in a particular specialty for at least two years and are recognized as specialists in the local community (same criteria as applied to other medical specialists).

(ii) Licensed Doctors of Medicine or Doctors of Osteopathy who have received specific training for and are experienced in performing mental health therapeutic, diagnostic, or counseling functions.

(iii) Psychologists with a doctorate in clinical or counseling psychology who hold a valid license to practice psychology.

(iv) Psychologists with a doctorate in clinical or counseling psychology who are employed by governmental agencies exempt from the licensing law.

(v) Other licensed clinicians or those employed by governmental agencies who have received administrative approval to provide this treatment service.

(B) Upon receipt of a written report from the therapist, the supervisor may approve additional three-month periods of therapy. Clients needing long-term or ongoing psychiatric or psychological treatment will be referred to the appropriate community mental health center.

(C) Personal Adjustment Counseling may be provided for those persons with emotional conditions who may benefit from counseling to bring about a more adequate social adjustment, alleviate superficial anxiety, and to create more effective interpersonal relationships. Personal Adjustment Counseling may be provided by: those individuals listed in (17) (A) of this Subsection.

(18) Speech therapy/training as recommended in a speech evaluation. Speech therapy, although provided by recognized speech therapists, is considered Personal Adjustment training and is not based on financial status. The providers of speech therapy are classified as medical vendors.

(19) Surgery and medical treatment.

(A) Surgery and complex or unusual medical treatment may be provided when recommended by a specialist. Medical consultant approval will be obtained prior to planning and authorizing a diagnostic procedure which could lead to immediate surgical treatment. The medical consultant will give conditional approval for the possible surgery if deemed necessary. Normal post-operative care is an integral part of the surgery; therefore, no post-operative charges are to be paid above the approved surgical fee.

(B) Specified outpatient surgical services are approved for payment when provided in qualified outpatient surgical facilities. Qualified facilities include Medicare certified free standing ambulatory surgical centers, Medicare certified hospitals offering outpatient surgical services, and hospitals which have an agreement with DRS.

(C) The counselor will advise the client he/she may be liable for any balance due when payment by private insurance exceeds the Department allowable rate.

(20) Weight loss treatment. A weight loss plan or treatment are included as a service in the IPE for individuals who are eligible on the basis of obesity. A licensed dietician or a physician skilled in weight reduction must monitor any treatment program authorized by the agency. Surgery for weight loss is not provided unless medically recommended as treatment for morbid obesity, a second confirming medical opinion is obtained, ~~and~~the surgery is approved by the DRS medical consultant and supervisory approval is obtained. Before approving DRS provision of surgery for treatment of morbid obesity, the supervisor shall consider the individual's past experience with standard weight loss protocols, and medical and behavioral factors that may impact the individual's ability to obtain long-term benefit from the surgery.

(21) Wheelchairs and other durable medical equipment when prescribed by a physician or recommended by an occupational therapist, physical therapist, assistive technology specialist or person with equivalent qualifications.

Power mobility devices may be purchased for individuals when necessary to assist the client in achieving IPE goals.

(A) The client, and/or client's authorized representative, will participate in choosing from which vendor the wheelchair or durable medical equipment will be purchased. Wheelchairs and other durable medical equipment will be authorized at the agency approved fee.

(B) The client, or client's family or authorized representative as appropriate, is responsible for maintaining wheelchairs or other durable medical equipment in good working order. DVR and ~~DVS~~DVRBVI will pay for repairs to wheelchairs or other durable medical equipment during the life of the case unless there is clear evidence the equipment has been damaged due to client abuse or neglect. An agency-purchased wheelchair will be returned to the agency if the client becomes unable to use it.

(C) Wheelchair rental may be authorized for a period not to exceed six months when necessary to assist the client with mobility. An exception can be made if it is documented that rental is more cost effective than purchase.

PART 13. SUPPORTIVE SERVICES

612:10-7-130. Maintenance

(a) **General guidelines.** Maintenance is a supportive service provided to assist with the out-of-ordinary or extra expenses to the individual resulting from and needed to support the individual's participation in diagnostic, evaluative, or other substantial services in the IPE. Maintenance, including payments, may not exceed the cost of documented expenses to the individual resulting from service provision. Authorizations for maintenance will not be issued to pay the cost, or part of the cost, for any other service or expense.

(b) **Provision of maintenance.** To receive maintenance, an individual must be either an eligible DVR or ~~DVS~~DVRBVI client or an applicant for vocational rehabilitation services undergoing diagnostic evaluation and testing. For an accepted client, maintenance must be a supportive service related to outcomes listed in the Individualized Plan for Employment. The costs of the maintenance may not exceed the amount of increased expenses that the IPE causes for the individual or his/her family. The provision of maintenance as a supportive service is not synonymous with general assistance payments. It is not intended to pay for those living costs that exist irrespective of the individual's status as a DVR and ~~DVS~~DVRBVI client. Maintenance payments must be carefully tied to the achievement of specific VR outcomes which must be stated and documented in the case record and the IPE to justify such payments. Maintenance cannot substitute for or supplement income assistance payments.

(1) **Maintenance for diagnostic and evaluation services.** Maintenance payments for individuals receiving diagnostic or evaluation services may be authorized for overnight care, short-term lodging and/or meals.

(2) **Maintenance for physical restoration services.** Maintenance for physical restoration services is paid to the client until he/she is able to work. The client must be in his/her own home and the covered period of convalescence is to be 60 days or less. For convalescent periods in excess of 60 days, the counselor will refer the client to other sources for assistance (public assistance, SSI). In no instance will medical maintenance be paid while the client is hospitalized.

(3) **Maintenance for training.** Maintenance can be authorized for full time vocational school students or college students. Maintenance can be authorized for a client granted an exception to the full-time attendance requirement under 612:10-7-150(a).

(4) **Maintenance for job search services.** Maintenance for job search services requires an IPE with major services directed toward the goal of employment.

(5) **Maintenance for job relocation.** Maintenance may be paid to a client for assistance in relocating to a new job site. Maintenance services for this purpose must be identified on the IPE.

(c) **Clothing expenses.** Clothing and/or uniforms can be purchased when needed to begin training or enter employment. Everyday clothing needs of the client are considered as part of the basic living requirements. Any clothing purchased for the client must be:

(1) required by the training facility;

(2) necessary to participate in job search or begin employment; or

(3) necessary to begin a training program that requires clothing standards beyond the client's means.

(d) **Day care expenses.** Day care expenses will be paid for from DVR and ~~DVS~~DVRBVI funds only when necessary to participate in the IPE, and it is fully documented that no other resources are available for this service, including family members and friends.

PART 15. TRAINING

612:10-7-142. General guidelines for training services

(a) **Types of training.** Training provided by DVR and ~~DVS~~DVRBVI may include:

(1) **Vocational.** Vocational training provides the knowledge and skills necessary for performing the tasks involved in an occupation. Such knowledge and skills may be acquired through training from an institution, on-the-job, by tutors or through a combination of these methods. Vocational training may be provided for any occupation.

(2) **Prevocational.** Prevocational training includes any form of academic or basic training provided for the preparatory skills needed for entrance into a vocational training program or employment. Prevocational training is initiated to enhance occupational knowledge or skills or to remove an educational deficiency interfering with employment.

(3) **Personal or work adjustment.** Personal or work adjustment training includes any training given for one or a combination of the reasons given in (A) - (D) of this paragraph.

(A) To assist the individual in developing personal habits, attitudes, and skills enabling the individual to function effectively in spite of disability.

(B) To develop or increase work tolerance prior to engaging in prevocational or vocational training or in employment.

(C) To develop work habits and to orient the individual to the world of work.

(D) To provide skills or techniques enabling the individual to compensate for a disability such as the loss of a body part or the loss of a sensory function.

(b) Training may be provided for clients who:

(1) are mentally, physically and/or emotionally capable of pursuing a course of training to completion;

(2) require training to achieve an employment outcome or other goals established in the Individual Plan for Employment (IPE); and

(3) are determined to have a reasonable opportunity for obtaining employment in the chosen vocation.

(c) Decisions related to training are based on the individual needs and informed choices of the client as identified in the IPE.

(d) DVR and ~~DVS~~DVRBVI will only pay tuition and fees for courses which count toward requirements consistent with the vocational goal of the IPE. Training of DVR and ~~DVS~~DVRBVI clients is provided by colleges, universities, private business and trade schools, state supported vocational schools, employers in the form of on-the-job training, sheltered workshops, and other approved training facilities with valid contracts.

(e) Federal regulations require a search for comparable services and benefits with the results documented before payment can be made for training in the following institutions: colleges, universities, community/junior colleges, public or private vocational/technical schools, or hospital schools of nursing. PELL grants and other available Federal/State student aid (excluding merit awards) must be applied to tuition, fees and all other educational expenses as a first dollar source prior to consideration of the expenditure of DRS funds.

(f) Training costs will not be authorized beyond the first DVR and ~~DVS~~DVRBVI sponsored enrollment until proof of the availability of comparable benefits is received by the counselor.

(g) Once training has begun, the client is expected to progress toward the vocational objective at a steady rate. This requires the client to attend training on a regular basis, and maintain a full-time load unless an exception is granted by the counselor due to severity of disability, scheduling problems or other valid reasons. Training progress reports or other methods of reporting (i.e., grade reports, transcripts) are utilized to document training progress. Sporadic attendance and reduced training loads causing a delay in the completion of training must be reviewed by the counselor. The client is responsible for advising the counselor of problems encountered during the training program.

(h) All types of institutional, technical, personal adjustment or employment training are purchased by an authorization issued by the counselor.

612:10-7-149. College and university training

(a) Training for rehabilitation clients is provided in those colleges and universities which are accredited by the appropriate accrediting agency, whose credits will be given full recognition by other accredited colleges and universities, and which are under contract. Private and denominational colleges and universities may be used for the training of DRS clients, provided they are accredited and under contract.

(b) Clients approved for college or university training must exhibit the ability to do college work. The counselor will have evidence in the case ~~folder~~ file indicating the client's ability to do college work before a program is developed calling for training at the college or university level.

(c) For DVR and ~~DVS~~DVRBVI clients pursuing a college or university degree, the Department will sponsor only the number of semester hours or remaining hours required for a specific degree. Exceptions may be approved by the counselor.

(d) Previously completed credit hours which are applicable to the degree requirements will be incorporated in the development of the IPE. When a client changes majors, DVR and ~~DVS~~DVRBVI funding will be limited to the number of credit hours needed for the new major minus the number of DVR and ~~DVS~~DVRBVI funded credit hours lost due to the change in majors, unless the change in majors results from circumstances beyond the client's control.

612:10-7-150. Continued eligibility for college or university training

(a) **Requirements for continued eligibility.** DVR or ~~DVS~~DVRBVI clients in college or university training will be expected to attend classes regularly and make continuous progress toward graduation. To continue assistance with college or university training, the client must maintain a cumulative 2.0 grade-point average (GPA), based on a four point (4.0) scale. The client must carry the minimum number of semester hours determined to be full time at the school attended. Exceptions may be granted by the counselor, based on severity of disability, scheduling problems, or other valid reasons. When a client fails to meet the requirements for continued sponsorship the guidelines in (1) - (5) of this Subsection are to be followed:

(1) Payment of training services based on client's financial status will not be provided if the client's grades fall below 1.5 cumulative GPA.

(2) Training services may be paid for a client having a cumulative GPA between 1.5 and 1.9 for the first semester that grades fall below 2.0 cumulative GPA. Subsequent enrollments can only be paid if the student's cumulative GPA shows progress.

(3) A client failing to meet the grade point requirement may continue to receive services not based on financial status.

(4) A client failing to meet grade point requirements may be approved by the counselor if there are extenuating circumstances beyond the client's control.

(5) A client failing to meet grade point requirements will be contacted as soon as appropriate to complete a program review to determine if a change in services, vocational goal, or objectives is needed. A client failing to meet chosen goals will not have his/her case closed until the counselor has provided counseling and guidance and determined that a change in the IPE is inappropriate. The counselor should investigate the need for further vocational and/or educational evaluation to explore alternative employment goals.

(b) **Withdrawals and failures.** Clients who withdraw or fail courses paid by DVR and ~~DVS~~DVRBVI will be required to pay for a like number of hours during the following enrollment period subject to the guidelines in (a) of this Section.

612:10-7-152. Payment of tuition and fees at colleges and universities

(a) **Public institutions of higher learning.** Tuition and fees for DVR and ~~DVS~~DVRBVI clients attending public colleges and universities will be paid at the rate set for resident students by the Oklahoma Regents for Higher Education and within limits prescribed by the Legislature. DVR and ~~DVS~~DVRBVI will pay those fees charged to all students and special fees associated with required courses in the student's major field of study. After the completion of the first semester, a grade report, proof of enrollment, and an itemized invoice are required documentation to support the authorization for tuition and fees. It is the responsibility of the client to provide this support documentation. The client may provide this documentation electronically or as a printed document in the standard format used by the school.

(b) **Private institutions of higher learning.** Tuition and fees for students in attendance at accredited private or denominational schools will be paid at the same rate as that paid at state-supported colleges or universities of equal rank. After the completion of the first semester, a grade report, proof of enrollment, and an itemized invoice are required documentation to support the authorization for tuition and fees. It is the responsibility of the client to provide this support documentation. The client may provide this documentation electronically or as a printed document in the standard format used by the school.

(c) **Federal/State student aid.** Pell Grant and all other Federal/State aid (excluding merit awards) must be applied to tuition, fees and all other educational expenses as a first dollar source prior to the consideration of the expenditure of DRS funds regardless of whether the student is attending a public or private institution of higher education.

(d) **Cost documentation.** Each client is responsible for providing the counselor a copy of the college or university's current semester costs before the designated "Drop and Add" date.

612:10-7-158. Training for individuals in custody of the Department of Corrections

DVR and ~~DVS~~DVRBVI funds are not used to defray the cost of training for individuals in the custody of the Department of Corrections. This does not apply to individuals who meet the criteria set forth within a joint memorandum of understanding between DRS and the Department of Corrections.

612:10-7-161. Public and private vocational schools

(a) Client training may be purchased from public or private vocational schools that have a valid purchasing agreement with DRS, after use of available comparable benefits such as PELL grants and other federal/state student aid (excluding merit awards).

(b) Privately-owned vocational schools must be accredited or licensed through the appropriate state board, if applicable, before a purchasing agreement with DRS can be finalized. Tuition at privately owned vocational schools will be paid at rates approved by the Oklahoma Commission for Rehabilitation Services sitting as the Rates and Standards Committee. The authorized rate will remain constant during the contract period.

(c) Continued eligibility of a client in training at a vocational school will be based on the client's performance in respect to grades, progress and attendance. The minimum standards used by the training facility for satisfactory progress in respect to grades and attendance will be utilized by DVR and ~~DVS~~DVRBVI staff in determining the progress of the client.

(1) DVR and ~~DVS~~DVRBVI sponsored clients attending vocational technical schools who withdraw or fail course work will be required to pay for like credit or clock hours during the following enrollment period.

(2) A client who fails to meet agency sponsorship guidelines for training at vocational technical schools may continue to receive services not requiring client participation in cost of services.

(3) A client failing to meet agency sponsorship guidelines may be approved by the counselor if there are extenuating circumstances.

(4) A client failing to meet agency sponsorship guidelines will be contacted as soon as appropriate to complete a program review to determine if a change in services, vocational goal or objective is needed. A client failing to meet chosen goals will not have her/his case closed until the counselor has provided counseling and guidance and has determined that a change in the IPE is inappropriate. The counselor should investigate the need for further vocational and/or educational evaluation to explore alternative employment goals.

612:10-7-162. Textbooks, supplies, training tools and equipment

(a) For clients attending training, an allowance may be provided to cover the actual cost of required books, supplies, training tools and equipment, after available comparable benefits have been applied. When an allowance is provided, the client will be required to furnish documentation of the costs of required books, supplies, tools or equipment. The counselor

will work with the client in obtaining and utilizing comparable benefits including the PELL grant and planning for the use of other resources to help meet this expense. The textbook allowance will be adjusted the following semester for clients who fail or withdraw from courses paid by DVR or ~~DVS~~DVRBVI. Only textbooks for the current semester's enrollment will be provided.

(b) Training tools and equipment costing more than $500 will be purchased directly from the vendor in accordance with DRS policy.

(c) The client, or client's family or authorized representative as appropriate, is responsible for maintaining supplies and training tools in good working order. DVR and ~~DVS~~DVRBVI will pay for repairs to supplies and training tools purchased with DVR and ~~DVS~~DVRBVI funds during the life of the case unless there is clear evidence the supplies or training tools have been damaged due to client abuse or neglect.

(d) Gun "kits", but not operable firearms, used as training tools may be purchased for students in gun-smithing school only.

(e) The Department retains title to any tools costing $500 or more purchased for training purposes until title is released by an authorized agent of the Department. The counselor will complete the Receipt for Equipment and Title Agreement, and obtain necessary signatures, before releasing such tools to the client. Any tools purchased for training purposes remain with the client while he/she is in training and after the completion of the training if they can be used in the client's chosen vocation. If the client drops out of training, DRS at its discretion may take steps to repossess the tools to transfer to another client.

(f) Case recording must reflect the disposition of tools and materials provided the client before the case is closed.

(g) Computers and related high tech equipment necessary for the client to participate in a training program or required by the training entity may be purchased as a client service in accordance with agency policy. The cost of computers and related equipment will not be included in an allowance for textbooks and supplies.

PART 17. ~~SUPPORTED~~SUPPORTIVE EMPLOYMENT SERVICES

612:10-7-183. Ongoing support services

The individual will be provided needed and appropriate ongoing support services such as job site training, transportation, service to family members, or any service necessary to achieve and maintain the supported employment placement throughout the term of employment. DVR and ~~DVS~~DVRBVI sponsored support services are provided from the time of placement until the individual is stabilized on the job (completion of "Stabilization Milestone") by the service provider.

612:10-7-184. Extended services

Extended services are a continuation of ongoing support services provided to individuals in Supported Employment at completion of stabilization, during the "Successful Rehabilitation" Milestone and beyond case closure. Such services consist of the provision of specific services, including natural supports, needed to maintain the supported employment placement. Extended services are paid from funding sources other than DVR and ~~DVS~~DVRBVI and are specifically identified in the IPE. An individual may not be found ineligible for supported employment services because the resource for providing extended services cannot be identified.

PART 19. SPECIAL SERVICES FOR INDIVIDUALS WHO ARE BLIND, DEAF, OR HAVE OTHER SEVERE DISABILITIES

612:10-7-199. Reader/recording services

(a) Reader services may be purchased for individuals who are blind, visually impaired or have difficulty reading standard print books/materials due to any other disability. Reader services are exempt from client participation in cost of service. Hours of reader service purchased shall be based upon the client's needs with respect to reading of textbooks, training materials or other printed materials used in the rehabilitation process.

(b) Payment for reader services will be based on the Federal Minimum Wage, unless the counselor justifies use of a higher basis for readers of specialty subjects (e.g., law, science, technology, professions). Reader services may not be paid in advance. Payment is authorized directly to the client in the same manner as maintenance or transportation and may be included on the same authorization with either or both of these other services.

(c) Individuals who have difficulty reading or using standard print materials will be referred to existing resources for recorded, large print, Braille and digital books and materials. Any required fee or materials cost for a recorded/digital textbook service may be paid through DVR and ~~DVS~~DVRBVI funds and is not based on financial status determination.

612:10-7-201. Rehabilitation teaching services

Rehabilitation teachers provide counseling and instruction to aid clients in adjusting to blindness. All clients who are legally blind or have a rapidly progressive eye condition are to be referred to a rehabilitation teacher. Exceptions are allowed in instances where rehabilitation teaching services have been provided and the client appears to be functioning independently, or when physical restoration services are planned which will likely restore the client's functioning to a level which would remove the need for rehabilitation teaching. Rehabilitation teachers employed by the Division of ~~Visual Services~~ Vocational Rehabilitation for the Blind & Visually Impaired may serve clients who are legally blind jointly with the DRS counselor.

612:10-7-203. Orientation and Mobility (O & M)

DVR and ~~DVS~~DVRBVI clients who are legally blind can receive direct instruction from O & M specialists employed by the Department. O & M specialists assist these clients to adjust to their surroundings.

612:10-7-205. Services to persons who are deaf-blind

(a) **Overview of services.** Because of the overwhelming impact upon the individual with a combination disability of deafness and blindness, a multiple disciplinary approach is needed to adequately serve these individuals. Unique problems in mobility and communication can cause severe social, recreational, academic deprivation and long term prevocational training may be necessary. Persons who are deaf-blind are capable of competitive employment and the counselor will carefully evaluate expected employment outcomes.

(b) **Deaf-Blindness Specialist.** To promote and coordinate appropriate services for persons with dual losses of vision and hearing, the Division of ~~Visual Services~~ Vocational Rehabilitation for the Blind & Visually Impaired employs a Deaf-Blindness Specialist. This specialist works with counselors, rehabilitation teachers and others who provide services directly to clients who are deaf-blind. A major role served by this specialist is coordinating services and ensuring dialogue among schools, programs, agencies and organizations serving the deaf and blind.

612:10-7-206. Assistive technology services for individuals with visual impairments

The need for assistive technology devices and services is to be addressed in the client's Individualized Plan for Employment. Counselors and rehabilitation teachers may refer clients with visual disabilities to the Division of ~~Visual Services~~Vocational Rehabilitation for the Blind & Visually Impaired assistive technology laboratory for blindness and low vision which may provide or procure:

(1) assistive technology evaluations;

(2) recommendation of assistive technology devices and services to meet individual needs;

(3) training in use of technology and devices, referral to training sources and information on training options;

(4) information on technologies and devices to meet specific individual needs;

(5) technical assistance for installation and operation of select applications and devices; and

(6) demonstration and loan of adaptive aids, devices, electronic and computer technologies and other assistive technology products.

PART 21. PURCHASE OF EQUIPMENT, OCCUPATIONAL LICENSES AND CERTIFICATIONS

612:10-7-216. Tools, occupational equipment, initial stocks and supplies

(a) Tools, occupational equipment and supplies will be provided to eligible clients to the extent necessary to achieve their vocational goal providing the client has adequate resources available for the proper maintenance and upkeep of such tools and equipment. The client, or client's family or authorized representative as appropriate, is responsible for maintaining tools, occupational equipment, initial stocks, and supplies in good working order. DVR and ~~VSD~~ DVRBVI will not pay for repairs to tools, occupational equipment, initial stocks and supplies purchased with DVR and ~~DVS~~DVRBVI funds once title has been released to the client. DVR and ~~DVS~~DVRBVI will not pay for repairs before title is released when there is clear evidence that the damage resulted from abuse or neglect.

(b) The client will retain possession and control of articles while engaging in the job or occupation for which articles were provided, or when title is released to client. Occupational tools, occupational equipment, and initial stocks and supplies are defined as follows:

(1) Occupational tools are considered to be those minimum tools required for a designated trade, necessary to the employment of the individual, and not furnished by the employer. DRS will NOT purchase operable firearms even if required for employment. Counselor will assist consumer in finding resources to help in this purchase if necessary.

(2) Occupational equipment is equipment required to meet the minimum needs of an individual in starting and conducting a business of his or her own.

(3) Initial stocks and supplies are those materials and merchandise necessary for the client to become operational in a business.

(c) Purchase of occupational tools, equipment and initial stocks and supplies will be made in accordance with 612:10-1-7. If the client is required to participate in cost of services, the payment will be made to the nonmedical vendor. When the equipment is received and/or installed, the appropriate rehabilitation professional completes the Receipt for Equipment and Title Agreement. If the purchase total is $5,000 or more, the rehabilitation professional then signs the vendor's invoice and routes it to DRS state office.

(d) Used tools or equipment may be purchased when it is evident considerable savings may be affected. Used equipment or tools are to be appraised piece-by-piece by at least three shop owners or managers in the same type of work, and who are not acquainted with the vendor.

(e) If the counselor, after a thorough check of the tools or equipment, finds they are not being used for the purpose for which they were purchased, the counselor is to repossess the tools or equipment by executing the Release or Receipt of Equipment form.

PART 25. TRANSITION FROM SCHOOL TO WORK PROGRAM

612:10-7-245. Definitions

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

"FLSA" means the Fair Labor Standards Act which sets forth labor standards and protections as enforced by the U.S. Department of Labor.

"IDEA" means the Individuals with Disabilities Education Act, P.L. 101-476 which ensures the rights and protections of children with disabilities and their parents being served by

public education agencies through special education services and on an individualized education program (IEP).

"IEP" means Individualized Education Program. This is an educational document developed on an annual basis that documents the educational and transition goals students are working toward each year in grades PK-12.

"LEA" means Local Educational Agency, or local school district.

"SDE" means State Department of Education.

"SECTION 504 Plan" is a plan designed as a protection for students with disabilities who may not be considered eligible for special education under the IDEA in compliance with Section 504 of the Rehabilitation Act of 1973 as amended.

"Teacher coordinator" means a teacher employed by a school who is released as part of her work day and responsible for working with DVR/~~DVS~~DVRBVI counselors and students eligible for the Transition from School to Work Program.

"Work Adjustment Training (WAT)" is provided on a work site, in a school, or in an approved Community Rehabilitation Program having valid contracts with DRS. WAT may also include (but is not limited to) activities aimed toward work tolerance, development of personal habits, attitudes, and work habits necessary to orient the individual to the world of work. High school students eligible for this service must be at least 16 years of age and may not participate for more than 18 months unless determined necessary by the counselor and client.

"School Work Study (SWS)" allows students with disabilities to work on the school campus. The students are supervised or closely monitored by school personnel, and the school pays the students a stipend with DRS making reimbursement to the school for that payment. The stipend is not a wage/salary. The school maintains liability for the students while working on campus.

"Trial Work/Extended Evaluation" has the meaning given these terms in DRS policy and federal law/rules.

"Work Site Learning (WSL)" allows students with disabilities to work in the community. The students are supervised or closely monitored by school personnel, and the school pays the students a stipend with DRS making reimbursement to the school for that payment. The stipend is not a wage/salary. The school maintains liability for the students while working off campus.

"Employer Work Study (EWS)" allows students with disabilities employment experience in part-time jobs in the community with the employers paying the wages/salary(ies). In this instance, the students are employees of the community employers, and DRS does not reimburse the employers for the wages/salary(ies).

SUBCHAPTER 9. REHABILITATION TEACHING SERVICES

PART 3. CASE PROCESSING AND RECORDING

612:10-9-17. Application Status

(a) A case is placed in Application Status when the individual submits an application with DVR or ~~DVS~~DVRBVI in accordance with agency policy.

(b) A decision of eligibility or ineligibility must be made within 60 days of the completed application unless unforeseen and exceptional circumstances beyond the control of the Department indicate the need for an extension as documented on the Need for Extension of Time to Determine Eligibility form. The consumer must agree an extension of time is warranted after full consultation.

(c) The rehabilitation teacher will conduct an initial interview and document it in a narrative summary. The consumer and/or representative will be given an explanation of consumer rights and responsibilities and information about the Client Assistance Program and mediation procedures in a medium which is understandable to the individual and in their preferred medium. The teacher will document this in the case record. The consumer will be offered the opportunity to register to vote at time of application and/or time of address change.

SUBCHAPTER 11. INDEPENDENT LIVING SERVICES FOR OLDER AND INDIVIDUALS WHO ARE BLIND

PART 1. SCOPE OF SERVICES

612:10-11-7. Administrative review

Any individual who is an applicant or client of OB services must be advised of his/her right to request a timely review or a re-determination of any action taken by DRS staff. The review will be conducted by the Administrator for ~~Visual Services~~Vocational Rehabilitation for the Blind & Visually Impaired or his/her designee, who shall respond to the applicant or client in writing with the findings and conclusions of the review.

[OAR Docket #15-545; filed 6-15-15]

TITLE 612. STATE DEPARTMENT OF REHABILITATION SERVICES CHAPTER 15. OKLAHOMA LIBRARY FOR THE BLIND AND PHYSICALLY HANDICAPPED (OLBPH)

[OAR Docket #15-546]

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Subchapter 1. General Provisions
612:15-1-3. Library functions and legal basis [AMENDED]
Subchapter 5. Library Loan Policy
612:15-5-2. Suspension procedures [AMENDED]
AUTHORITY:
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The proposed changes to Chapter 15 consist of division name change of Visual Services (VS) becoming Vocational Rehabilitation for the Blind & Visually Impaired (VRBVI).
CONTACT PERSON:
Tina Calloway, Administrative Assistant, State Department of Rehabilitation Services, Policy Development Division, 3535 N.W. 58th, Suite 500, Oklahoma City, OK 73112-4824, (405) 951-3552.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3 (5) AND 308 (E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 1. GENERAL PROVISIONS

612:15-1-3. Library functions and legal basis

(a) The Oklahoma Library for the Blind and Physically Handicapped (OLBPH), operated by the Division of ~~Visual Services~~Vocational Rehabilitation for the Blind & Visually Impaired within the Department of Rehabilitation Services, is the regional library for Oklahoma as part of the national network of libraries of the Library of Congress National Library Service (NLS) for the Blind and Physically Handicapped.

(b) On March 3, 1931, the Pratt-Smoot bill authorized the Library of Congress to arrange with other libraries to serve as local or regional centers to circulate books to blind or visually-impaired users. By the end of fiscal 1966, Congress passed Public Law 89-522 extending the service to library users who could not read standard print because of physical disability, which can include certain reading disabilities. State law (7 O.S. Section 8 and 74 O.S. 166.4(B)(3)(b) and 166.5) establish that the Section of Services to the Blind (~~Visual Services~~Vocational Rehabilitation for the Blind & Visually Impaired) of the Commission for Rehabilitation Services has the authority and duty to provide special library services to blind and visually impaired citizens.

(c) Functions of the Library include but are not limited to:

(1) Loan of books and periodicals in accessible formats for eligible adults and children with visual, physical or learning disabilities that prevent effective use of standard print materials;

(2) Production of recorded and Braille materials on request and on a limited basis, subject to availability of resources. Fees may be established to cover the cost of production. Services provided by OLBPH as part of the National Library Service will be given priority over requests for production of reading materials in alternate formats;

(3) Acquisition, housing and circulation of Braille textbooks and other accessible instructional materials for students with print disabilities in grades pre-K through 12;

(4) Improving access to print information for Oklahomans with print disabilities by providing, through contract or directly, services that supply audio or electronic access to newspapers, books, works by Oklahoma authors, educational programming, local and state activities, and information on resources.

(5) Recruitment and training of volunteers to support library functions.

SUBCHAPTER 5. LIBRARY LOAN POLICY

612:15-5-2. Suspension procedures

In the event any of the rules in this Chapter are violated repeatedly, the borrower's service may be suspended for a period of time after being given a written warning and an opportunity to reply. If after reinstatement of services, abuse continues, service may be suspended again. In the event of suspension, these steps will be taken:

(1) The library will first discuss the problem noted with the patron by telephone or in person, then will send a warning letter summarizing the discussion, the problem and, provide an opportunity for the patron to reply.

(2) If service abuse reoccurs, a second written communication is sent to the patron citing the earlier warning letter, listing incidents of abuse, giving the patron an opportunity to reply by a certain date, and suspending the service for a stated period up to six months. A specific date for resumption of service is included. Service will be suspended only after a review by and upon the concurrence of both the administrative librarian and the Director of ~~Visual Services~~Vocational Rehabilitation for the Blind & Visually Impaired.

(3) When the service is resumed, a letter will be sent to the borrower notifying him/her of the resumption of

the service and reminding the patron that further reoccurrences will result in another suspension of service as it relates to the documented abuse.

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TITLE 612. STATE DEPARTMENT OF REHABILITATION SERVICES CHAPTER 20. SPECIAL SCHOOLS

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Tina Calloway, Administrative Assistant, State Department of Rehabilitation Services, Policy Development Division, 3535 N.W. 58th, Suite 500, Oklahoma City, OK 73112-4824, (405) 951-3552.

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SUBCHAPTER 3. GENERAL OPERATING PROCEDURES FOR THE SCHOOLS

PART 1. GENERAL EDUCATIONAL POLICIES

612:20-3-5. Departmental resources

(a) **In-service training.** State Office staff are available as resource persons through the Staff Development Unit. They are charged by the director with the responsibility of assisting the superintendents with the development of a meaningful, ongoing in-service training program patterned to serve the individual needs of each school and embodying the Department's school goals.

(b) **Rehabilitative and ~~Visual Services Unit~~Vocational Rehabilitation for the Blind and Visually Impaired Division.** Coordination of efforts to make a smooth transition from secondary school to employment or further training will be facilitated by VR counselors trained to work with the blind and deaf. The Department of Rehabilitation Services will encourage and support efforts to enhance communication and cooperation between school and rehabilitation personnel.

[OAR Docket #15-547; filed 6-15-15]

TITLE 612. STATE DEPARTMENT OF REHABILITATION SERVICES CHAPTER 25. BUSINESS ENTERPRISE PROGRAM

[OAR Docket #15-548]

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Subchapter 2. General Provisions
612:25-2-5. Definitions [AMENDED]
Subchapter 4. The State Licensing Agency
Part 1. Organization and General Operation Standards
612:25-4-1. Organization of the State Licensing Agency [AMENDED]
Part 3. Business Enterprise Program Training
612:25-4-14. Training for new or potential licensed managers [AMENDED]
Part 5. State Licensing Agency Responsibility for Business Enterprise Operations
612:25-4-27. Initial inventory and supplies [AMENDED]
Part 9. Assignment ~~and Transfer~~ of Licensed Managers [AMENDED]
612:25-4-52. SLA responsibility for assignment and transfer of licensed managers [REVOKED]
612:25-4-53. Assignment, ~~promotion~~ and transfer ~~policy~~ [AMENDED]
612:25-4-54. Business enterprise vacancy announcement [AMENDED]
612:25-4-55. Qualifications [AMENDED]
612:25-4-57. Applicant Selection Committee [AMENDED]
612:25-4-58. Annual and Performance Evaluations [AMENDED]
612:25-4-59. Interview, Selection Process and Scoring [AMENDED]
612:25-4-60. Ninety day replacement [AMENDED]
612:25-4-61. Satellite~~/remote~~ business enterprise locations [AMENDED]
612:25-4-62. Vending machine income [AMENDED]
Part 11. Business Enterprise Program Auditing and Due Process
612:25-4-72. Audits [AMENDED]
612:25-4-73. Due process [AMENDED]
Subchapter 6. Licensed Managers and Business Enterprise Operation
Part 1. Licensed Managers
612:25-6-1. Licensing requirements for managing a business enterprise [AMENDED]
612:25-6-2.1. Probation [AMENDED]
612:25-6-3. Grounds for suspension or termination of a license [AMENDED]
Part 3. Business Enterprises
612:25-6-15. Setting aside of funds [AMENDED]
612:25-6-18. Establishing new licensed managers in business enterprises [AMENDED]

612:25-6-21. Business expenses [AMENDED]
612:25-6-22. Monthly reports [AMENDED]

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CONTACT PERSON:
Tina Calloway, Administrative Assistant, State Department of Rehabilitation Services, Policy Development Division, 3535 N.W. 58th, Suite 500, Oklahoma City, OK 73112-4824, (405) 951-3552.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3 (5) AND 308 (E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 2. GENERAL PROVISIONS

612:25-2-5. Definitions

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

"Act" means the Randolph-Sheppard Vending Facility Act (Public Law 74-732), as Amended by Public Law 83-565 and Pub Law 93-516, 20 U.S.C., Ch. 6A, Sec. 107.

"Active participation" means a process of good faith negotiations involving the Elected Committee of Licensed Managers and the State Licensing Agency. The Committee must be given the opportunity to have meaningful input into the decision-making process in the formulation of program policies which govern the duties, supervision, transfer, promotion and financial participation of licensed managers. The SLA is charged with the ultimate responsibility for the administration and operation of all aspects of the Business Enterprise Program.

"Annual Evaluation" means an evaluation conducted on a yearly basis of a manager. This evaluation will be performed at the end of each calendar year.

"BEP" means the Business Enterprise Program of the State Licensing Agency which provides self-employment opportunities for qualified persons who are blind.

"BEP Operations Coordinator" means the person who has responsibility for the operation of the Business Enterprise Program in the State.

"Blind person" means a person who, after examination by a physician skilled in the diseases of the eye or by an optometrist, whichever the person shall select, has been determined to have (1) not more than 20/200 central visual acuity in the better eye with correcting lenses, or (2) an equally disabling loss of the visual field as evidenced by a limitation to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees.

"Board" or "Commission" means the governing body for the State Licensing Agency.

"Business Consultant (BC)" means an individual who provides consultative and management services to those business enterprises and licensed managers of the State to which the consultant is assigned.

"Business Enterprise" means an approved business administered by the State Licensing Agency. See definition of "Vending Facility."

"Business Enterprise Program (BEP)" means the Business Enterprise Program services available to establish business enterprises for persons who are blind.

"Cafeteria facility" means a food dispensing business enterprise capable of providing a broad variety of prepared foods and beverages (including hot meals) primarily through the use of a line where customers serve themselves from displayed selections. A cafeteria may be fully automatic or provide limited waiter or waitress service. Table and/or booth seating facilities are always provided.

"Client or Consumer" means any person who has made application for the State Licensing Agency's services and has been determined by the State Licensing Agency to be eligible for services.

"Commissioner" means the Commissioner of the Rehabilitation Services Administration (RSA) who exercises approval authority for the Federal government under the Randolph-Sheppard Act.

"Committee" means the Elected Committee of Licensed Managers.

"Contract" means a written agreement between the State Licensing Agency and officials in control of Federal or other property to establish a business enterprise.

"Contract labor" means a person or company that performs duties or services not a part of the regular duties of the business enterprise.

"Counselor" means Division of Vocational Rehabilitation or Division of ~~Visual Services~~Vocational Rehabilitation for the Blind & Visually Impaired counselors assigned to the State Licensing Agency's program of vocational rehabilitation.

"Director" or **"Executive Director"** means the chief administrator of the State Licensing Agency.

"Displaced licensed manager" means a licensed manager who has been displaced from his or her business enterprise through no fault of his or her own.

"Dry/Wet facility" means any business enterprises providing manual dispensing of prepackaged articles, refreshments, and services.

"Elected Committee of Licensed Managers (ECM)" means the committee elected biennially by licensed managers in accordance with 34 CFR 395.14.

"Emergency" means an unforeseen circumstance that calls for immediate action. When a piece of equipment is out of order it is not normally considered an emergency unless it will harm/destroy lives, other equipment or property.

"Employee" means an individual who receives compensation for services rendered to a licensed manager.

"Equipment, expendable" means items having a relatively small cost per item and having a relatively short life expectancy.

"Equipment, non-expendable" means all necessary equipment which requires a relatively high capital outlay and has a normal life expectancy of several years.

"Federal property" means any building, land or other real property owned, leased, or occupied by any department, agency, or instrumentality of the United States (including the Department of Defense and the United States Postal Service), or any other instrumentality wholly owned by the United States.

"Federal regulations" means the regulations issued pursuant to the Randolph-Sheppard Act.

"Grantor" means a Federal, State, County, Parish, city government, private corporation, company, partnership or individual, who grants a permit or enters into an agreement with the State Licensing Agency to operate a business enterprise on its/their property.

"Grantor's agreement" means a written document between a Grantor and the State Licensing Agency which sets forth the terms, conditions and responsibilities of all parties to the agreement for the operation of a business enterprise on private and/or public property.

"Gross receipts" means all revenue from a business enterprise, including sales tax.

"Inactive Licensee" means a licensed individual who is not currently working in the Business Enterprise Program.

"Initial stock and supplies" means those resalable items or supplies necessary for the opening and operation of a specific type of business enterprise.

"Interim manager" means a licensed manager appointed to manage a business enterprise on a temporary basis.

"License" means a written instrument issued by the State Licensing Agency to a person who is blind, authorizing such person to manage a business enterprise.

"Licensed employee" means a licensed individual who is currently working for a licensed manager.

"Licensed Manager (LM)" means a licensed individual who has signed an agreement with the State Licensing Agency to manage a Randolph-Sheppard business enterprise under the supervision of the State Licensing Agency.

"Licensee" means a person who is blind and holds a valid BEP license.

"Licensing agency" means the State Licensing Agency (SLA), which has been designated by the Commissioner, pursuant to the Act, to issue licenses to persons who are blind for the management of business enterprises.

"Management services" means inspection, quality control, consultation, accounting, regulating, in-service training, and other related services provided on a systematic basis to support and improve business enterprises operated by licensed managers.

"Manager's agreement" means an agreement between a licensed manager and the State Licensing Agency, establishing basic terms and conditions for management of a business enterprise.

"Mail" is a method of distributing information that includes, but is not limited to, the U.S. Postal System, email, fax, or Federal Express.

"Net earnings" or "Net profits" means gross profit after deducting operating expenses and set-aside collected.

"Net proceeds" means the amount remaining from the sale of articles or services of business enterprises and any vending machine income or other income accruing to licensed managers after deducting the cost of such sales and other authorized expenses excluding set-aside charges required to be paid by the licensed managers.

"Net sales" means the sum total of sales, excluding sales tax.

"Nominee" means a nonprofit agency or organization designated by the State Licensing Agency through a written agreement to act as its agent in the provision of services to licensed managers under the State's Business Enterprise Program.

"Other income" means money received by a licensed manager from sources other than over the counter and machine sales.

"Other property" means property which is not Federal property and on which business enterprises are established or operated by the use of any funds derived in whole or in part, directly or indirectly, from the operation of vending facilities on any Federal property.

"Performance Evaluation" means an evaluation conducted to determine if a manager is eligible to apply for a facility or to be awarded a permanent BEP license.

"Permanent BEP License" means a license issued on a permanent basis to a BEP manager who has successfully completed all probationary requirements.

"Permit" means the official approval given a State Licensing Agency by a department, agency, or instrumentality in control of the maintenance, operation and protection of Federal property or person in control of other property where the State Licensing Agency is authorized to establish a business enterprise.

"Probationary BEP License" means a license issued to an individual on their first day as manager of an Oklahoma BEP facility.

"Probationary Licensee" means a person who has received a certificate of completion of the Business Enterprise Program training and has not completed their six (6) month probationary period.

"Purveyor" means an approved source of supply for food, beverages, supplies, or services.

"Randolph-Sheppard Act" means Public Law 74-732 as amended by Public Law 83-565, Public Law 93-516, and Public Law 95-602, 20 U.S.C. Chapter 6A, Section 107.

"Retained vending machine income" means vending machine income disbursed by a property managing department, agency or instrumentality of the United States, or received from vending machines on State or other property in excess of the amounts eligible to accrue to licensed managers.

"Routine preventive maintenance" means the regular care, upkeep, and cleaning of equipment used in a business enterprise.

"Rules and regulations" means the instrument written by the State Licensing Agency and approved by the Secretary of Education setting forth the conduct and operation of the Business Enterprise Program. A copy of the document granting approval of the rules and regulations from RSA, will be mailed to each licensed manager.

"Saleable stock/merchandise" means products comprising the merchandise available for sale to the public and determined by the SLA to be from an approved source in the original container, in date, consistent with the needs of the customers for a particular business enterprise.

"Satellite business enterprise" means a business enterprise assigned to a without a permanently assigned licensed manager on a temporary basis ~~which is being managed by a licensed manager who is also managing his/her regularly assigned business enterprise~~.

"Satisfactory site" means an area determined by the BEP Operations Coordinator to have sufficient space, electrical and plumbing outlets, and other such accommodations as prescribed by the Act, for the location and operation of a business enterprise in accordance with applicable health laws and building codes.

"Secretary" means the United States Secretary of Education.

"Set-aside funds" means funds which accrue to a State Licensing Agency from an assessment against the net proceeds of each business enterprise in the State's business enterprise Program and any income from vending machines on Federal property which accrues to the SLA.

"Snack bar business enterprise" means a business enterprise engaged in selling limited lines of refreshment and prepared food items necessary for a light meal service.

"State Licensing Agency (SLA)" means the State agency that issues licenses to persons who are blind for the operation of business enterprises on public and/or private property.

"State property" means lands, buildings, and/or equipment owned, leased, or otherwise controlled by the State.

"Statewide average manager earnings" means the average annual manager earnings (after set-aside) as calculated each year for the RSA-15 Report.

"Trainee" means a qualified client of the Division of ~~Visual Services~~Vocational Rehabilitation for the Blind & Visually Impaired, who when referred to the Business Enterprise Program, is placed in training to prepare for licensing under the rules and regulations of the State Licensing Agency.

"Training program" means the program of study and/or on-the-job training provided to prospective and/or experienced licensed managers.

"Vending facility" means automatic vending machines, cafeterias, snack bars, cart service, shelters, counters, and such other appropriate auxiliary equipment which may be operated by licensed managers and which is necessary for the sale of newspapers, periodicals, confections, tobacco products, foods, beverages, and other articles or services dispensed automatically or manually and prepared on or off the premises in accordance with all applicable health laws and including the vending or exchange of chances for any lottery authorized by State Law and conducted by an agency of a State within such State. [CFR 34, Part 395.1(X)]

"Vending machine" means any machine, operated using currency or other medium of exchange, which dispenses articles or services, except any machine operated by the United States Postal Service for the sale of postage stamps or other postal products and services. Machines providing services of a recreational nature and telephones shall not be considered to be vending machines.

"Vending machine facility" means an automated business enterprise which dispenses a variety of food and refreshment items and services from vending machines. Included in this category would be interstate highway locations and vending machine routes.

"Vocational Rehabilitation ~~Services~~for the Blind and Visually Impaired" means those services as defined in the Rehabilitation Act. [29 USC 701 et seq.]

"Volunteer" means an individual who works in a business enterprise and receives no compensation.

SUBCHAPTER 4. THE STATE LICENSING AGENCY

PART 1. ORGANIZATION AND GENERAL OPERATION STANDARDS

612:25-4-1. Organization of the State Licensing Agency

(a) **Governing board.** The Oklahoma Department of Rehabilitation Services (DRS) is the designated State Licensing Agency (SLA) for administration of Oklahoma's vending facility program for the blind under the Randolph-Sheppard Act. The governing board of the SLA is the Oklahoma Commission for Rehabilitation Services. The Director of DRS reports directly to the Commission.

(b) **Business Enterprise Program administration.** The Business Enterprise Program (BEP) is located in the Division of Visual Services Vocational Rehabilitation for the Blind & Visually Impaired, a division of DRS, and is administered by the Business Enterprise Program Operations Coordinator who reports to the ~~Visual Services~~Vocational Rehabilitation for the Blind & Visually Impaired Division Administrator.

(c) **BEP staff.** The SLA, with consultation from the Elected Committee of Licensed Managers, determines staffing requirements for administration of the BEP and provision of services to achieve the mission, goals and objectives of the Program.

(d) **Licensed managers.** The individual enterprises established by the Business Enterprise Program are managed by licensed managers. Licensed managers are subject to the policies and procedures of the Business Enterprise Program, but are not employees of the program, the SLA, or the State of Oklahoma. They do, however, have a contractual relationship with the SLA and are required to manage the business enterprise in accordance with established rules and regulations.

PART 3. BUSINESS ENTERPRISE PROGRAM TRAINING

612:25-4-14. Training for new or potential licensed managers

(a) **Overview of Licensed Manager Training.** The Business Enterprise Program (BEP) provides individuals who are blind with training that leads to potential employment as a Licensed Manager of a vending facility or related business in the Business Enterprise Program. The training program includes but is not limited to training in laws and regulations affecting the Business Enterprise Program, state and federal tax reporting, food service operations, sanitation, inventory control, money management, staffing of personnel, safety procedures, business management principles and techniques, and preparation of reports required by the State Licensing Agency. The licensed manager training program will be based on a curriculum developed and periodically reviewed through consultation with appropriate business representatives, trainers, BEP experts, and the Elected Committee of Licensed Managers. Additional training required by the licensed manager trainee to adjust to blindness, learn assistive technology skills or improve the trainee's opportunity to succeed as a licensed manager may be arranged through coordination with the DRS Division of ~~Visual Services~~Vocational Rehabilitation for the Blind & Visually Impaired and DRS Division of Vocational Rehabilitation.

(b) **Application process.** Applications for BEP training shall include the following information which shall be obtained from the individual's counselor:

(1) current eye examination, documenting blindness;

(2) documentation for United States citizenship;

(3) documentation the client is at least 18 years of age; and

(4) completion of any rehabilitation training prerequisites established by the BEP in consultation with the ECM to better optimize the successful employment outcome~~;~~.

(c) **Acceptance for training.** Applicant qualifications will be reviewed by BEP staff who will report any training-related recommendations to the individual's ~~DVS~~DVRBVI/DVR counselor and BEP operations coordinator. An individual's application must be approved by the BEP operations coordinator prior to acceptance into the training program.

(d) **Notice regarding criminal background record.** Before entering training, BEP applicants will be informed that a criminal background investigation will be performed and may prevent their being licensed to manage some BEP facilities.

(e) **Duration of training.** To be eligible for licensure as a BEP facility manager an individual must complete the full BEP manager training program, unless the BEP operations coordinator, in consultation with the Chair of the Elected Committee of Licensed Managers, determines an exception is justifiable.

(f) **Completion of training.** Each trainee who completes the BEP manager training program is issued a certificate certifying that the trainee has met all the training criteria to be a licensed manager in the Business Enterprise Program. Upon assuming management of their first facility, a certified graduate shall be issued a temporary license and begin a six (6) month probationary period. During this period, the probationary manager will receive benefits afforded all other managers, along with accruing seniority. Upon completion of their probationary period, the BEP Operations Coordinator, in consultation with the ECM Chair, will review their progress and if determined appropriate will issue their permanent BEP Manager License.

(g) **Failure to complete training.** If it appears that a trainee will not be able to successfully complete training, the BEP operations coordinator, in consultation with the ECM Chair, will review the individual's training record before making a decision to terminate training. The BEP operations coordinator will notify the trainee and their ~~DVS~~DVRBVI or DVR counselor of any BEP decision to terminate training.

(h) **Post-training interview.** Upon completion of a new manager's probationary period, they will be interviewed by a representative of the Elected Committee of Licensed Managers, normally the chairperson, to evaluate the effectiveness of the training program. The interviewer formulates recommendations and comments regarding the training program ~~to~~and~~provide~~provides them to the BEP Operations Coordinator.

(i) **Acceptance of out-of-state licenses.** The BEP Operations Coordinator will evaluate the skills and knowledge of BEP applicants who were licensed managers in other states. Training will be provided to correct any noted deficiencies and acquaint the applicant with Oklahoma's program. After qualifications are met, the applicant is issued a training completion certificate.

(j) **Seniority.** Seniority in the Oklahoma Business Enterprise Program will only accrue when managing an Oklahoma BEP facility.

PART 5. STATE LICENSING AGENCY RESPONSIBILITY FOR BUSINESS ENTERPRISE OPERATIONS

612:25-4-27. Initial inventory and supplies

(a) **Initial inventory.** A licensed manager may acquire initial merchandise for resale by purchasing it with his/her own funds, utilizing self-employment assistance that may be

available from DRS or other public and private sources, or use of a merchandise loan provided by the State Licensing Agency (SLA).

(b) **Merchandise loan.** When necessary to enable a licensed manager to acquire initial merchandise inventory, the SLA may extend a merchandise loan subject to the following terms:

(1) The amount of the loan will be determined by the SLA in consultation with the licensed manager and based on an assessment of merchandise necessary to initiate sales.

(2) The total amount of the loan will not exceed the average of the prior year's inventories without approval from the BEP operations coordinator.

(3) All merchandise purchased and placed on a merchandise loan must have prior approval by the SLA. The SLA will not make multiple purchases from any purveyor.

(4) The incoming licensed manager, BEP business consultant and BEP operations coordinator will determine what may be purchased from the existing stock of the outgoing facility manager. Only salable merchandise may be purchased. The BEP business consultant and operations coordinator will also assist the out-going manager in selling any remaining salable merchandise and its interim storage.

(5) A merchandise loan must be repaid to the SLA by a licensed manager in monthly installments equaling two percent (2%) of monthly gross sales. A licensed manager shall not allow the facility inventory level to fall below that of the balance of the merchandise loan. Managers receiving loans will sign a merchandise security agreement that will be retained on file by DRS and released to the manager when loan repayment is complete along with a letter from the BEP Operations Coordinator officially notifying the licensed manager of their full repayment of the loan.

(6) When a merchandise loan is secured by stock, a licensed manager may not permit the ownership of the stock to vest in any person or organization other than the SLA.

(7) When a licensed manager leaves a business enterprise, any remaining merchandise loan balance (and other unmet obligations to the SLA) will be subtracted from the ending inventory in to~~determining~~determine the manager's equity in the ending stock.

(c) **Failure of licensed manager to repay loan.**

(1) If a licensed manager's merchandise loan payment is not received in the BEP office within five days after the due date, the licensed manager will be placed on probation and is not eligible to make application into the selection process.

(2) If a licensed manager's merchandise loan payment remains delinquent through the succeeding month and is not received in the BEP office within five days after the succeeding month's due date, the BEP operations coordinator will recommend suspension or termination of the operator's agreement by the SLA director unless an alternate repayment schedule has been approved by the SLA. The SLA will initiate action to collect a remaining merchandise loan balance when a loan payment is two months overdue.

(3) When a licensed manager leaves the program for any reason, the merchandise loan is due in full unless arrangements are made with the SLA to divide the balance into twelve (12) equal payments that will be due on the first day of each month.

(d) **Second merchandise loan.**

(1) Under documented extreme circumstances, a licensed manager who has paid off his/her previous merchandise loan may receive a second merchandise loan for the same facility when it has been determined that the loan is necessary to allow the licensed manager to remain in his/her facility.

(2) If a licensed manager requires a second merchandise loan while the first loan is still outstanding, other than for the expansion of his/her facility, he/she will be placed on probation until one of the loans is paid in full.

(3) Second merchandise loans for the purpose of facility expansion will be limited to 50% of the cost of additional salable merchandise needed.

(e) ~~If a licensed manager wishes to provide his or her own merchandise and will not require a merchandise loan, he or she must sign a statement to that effect.~~It is the incoming manager's choice to procure any merchandise from the out-going manager. If this condition occurs, the outgoing manager must be given a one-week notice prior to the facility turnover to the new manager.

PART 9. ASSIGNMENT ~~AND TRANSFER~~ OF LICENSED MANAGERS

612:25-4-52. SLA responsibility for assignment and transfer of licensed managers [REVOKED]

~~The SLA will carry out assignment and transfer of licensed managers through business enterprise vacancy announcements, eligibility verification, and establishing and convening a Selection Committee.~~

612:25-4-53. Assignment, ~~promotion~~ and transfer ~~policy~~

(a) **Assignment.** The State Licensing Agency (SLA) administers a competitive selection process to accomplish the assignment of primary facilities to qualified individuals ~~to manage Business Enterprise Program (BEP) vending facilities~~. The selection process established by the SLA provides that the Elected Committee of ~~Blind~~ Licensed Managers (ECM) is an active participant in the selection of facility managers.

~~(b) **Promotion.** It is the SLA's policy to provide promotion opportunities for licensees through use of the established competitive selection process.~~

(~~c~~b) **Transfer.** The SLA, in consultation with the ECM, may transfer a licensed manager to a different location of similar complexity and income potential when it appears to be in the best interest of the licensed manager and/or the BEP. The SLA notifies the licensed manager and the ECM Chair, in writing,

by registered or certified mail of ~~a~~the transfer and the grounds for the transfer.

612:25-4-54. Business enterprise vacancy announcement

(a) The procedure for announcing business enterprise openings is a mail out to all licensed managers, licensed employees, and licensees ~~on the mailing list~~.

(b) The announcement period will be at least ten working days.

(c) If available, the information in (1) through (~~9~~10) of this Subsection will be contained on each announcement.

(1) type of business enterprise;

(2) estimated number of employees in the building and/or traffic flow unless security considerations prohibit release of such information;

(3) location of the business enterprise;

(4) classification;

(5) average gross sales as reported on monthly report for the previous 12 months;

(6) for a new business enterprise, estimates of monthly gross sales based upon potential patronage, with disclaimer this estimate is not a guarantee of sales;

(7) application due date;

(8) name and telephone number of the BEP business consultant; ~~and~~

(9) name and telephone number of the current manager~~.~~; and

(10) a copy of an OTC Form A 100.

(d) The following statement will be placed on all announcements. "All applicants are to be advised that any records provided with you application, including Business Plans, may be subject to the Oklahoma Open Records Act."

612:25-4-55. Qualifications

(a) In order to apply for manager placement in a Classification "A" or "B" facility in the Business Enterprise Program (BEP), an individual must hold a permanent license issued by the State Licensing Agency (SLA). In addition, the SLA requires experience in the program before an individual will be considered eligible to apply for "A" ~~and~~or "B" classification business enterprises. Certified graduates of the BEP Training Program are only eligible to apply for Classification "C" ~~and~~or "D" facilities. A location new to the BEP program is to be classified "C" for the initial 90 days of operation. The BEP Operations Coordinator, in consultation with the ECM Chairperson, will determine the need for any experience requirements.

(b) Applicants who qualify for the next lower classification will be considered for interview when no qualified applicants apply for a classification "A" or "B" facility announcement when it is deemed appropriate to do so by the BEP Operations Coordinator in consultation with the ECM Chairperson.

(c) Experience requirements for each classification are:

(1) Classification A. Applicants will be restricted to individuals who have a minimum of three (3) years total experience in an Oklahoma ~~business~~Business ~~enterprise~~ Enterprise including a minimum of one (1) year of management experience.

(2) Classification B. Applicants will be restricted to individuals who have a minimum of two (2) years total experience in an Oklahoma ~~business~~Business ~~enterprise~~ Enterprise, including a minimum of six (6) months of management experience~~,or two (2) years additional employment in a business enterprise may be substituted for the management experience~~.

(3) Classification C. No experience required, except on new locations as deemed appropriate by the BEP Operations Coordinator in consultation with the ECM Chairperson.

(4) Classification D. No experience required.

(d) The BEP Operations Coordinator, in consultation with the ECM Chairperson, may require additional BEP experience on applications for any facility. Verified BEP experience from another state may be considered.

~~(e) A displaced licensed manager will have "15" points added in the selection process a for the first comparable business enterprise announced; including type, gross sales, and geographical location,; for one year from the date of displacement.~~

(~~f~~e) Applicants will not be eligible to apply for a business enterprise facility if any of the following conditions exist:

(1) The licensed manager is on probation or the SLA has initiated suspension/termination proceedings against the licensed manager.

(2) The applicant is not current with their merchandise loan payments.

(3) The applicant is not current with his/her set-aside owed to the SLA.

(4) ~~The applicant~~Applicants who have a permanent license have~~has~~ not scored at least an 80 on ~~the~~their performance evaluation.

(5) Conditions 1-4 will not apply to new BEP training graduates.

(~~g~~f) Applicants must be eligible to obtain an Oklahoma Tax Permit. Along with each application, the applicant is to provide a signed OTC Form A 100 to determine their standing in relation to Sales Tax and Employee Withholding. The OTC Form A 100 will be used on a one-time basis for a tax inquiry in relation to that announcement application only.

612:25-4-57. Applicant Selection Committee

Selection Committee. The Selection Committee shall be established and convened by the SLA. The Selection Committee will consider applicants for assignment ~~and transfer~~. The Selection Committee shall make recommendation(s) to the BEP Operations Coordinator or designee. The BEP selection committee is chaired by the BEP Operations Coordinator or designee. Members include two members of the SLA staff, the area member of the ECM or alternate and the chairperson of the ECM or alternate (vice-chair or secretary or another member of the ECM, in order). If no member of the ECM can serve in either capacity, the BEP Operations Coordinator shall poll from the ECM chairs outside of the State of Oklahoma to complete the committee. No person can serve on the selection

committee who has a conflict ~~or~~of interest or is related to an applicant.

612:25-4-58. Annual and Performance Evaluations

(a) The BEP will conduct an annual evaluation of each licensed manager at the end of each calendar year. Performance evaluations will be conducted when a manager applies for a facility or when a probationary period ends. All evaluations will be based on data collected from the manager's primary assigned facility and will consist of the previous twelve (12) working months information. The Licensed Manager will be advised of the results of any evaluation in writing. The manager will be evaluated in the following areas:

(1) Tasks/responsibilities

(A) Timely submission and accuracy of all required monthly reports and payments.

(B) Accurately calculated gross profit percentage reported on monthly reports.

(C) Accurately calculated net profit percentage reported on monthly reports.

(D) Maintenance of an acceptable level of merchandise inventory.

(E) Attendance at Agency and other certified training.

(F) Attendance at Quarterly ECM Meetings.

(2) Work Habits

(A) Provides preventive maintenance and appropriate cleaning/sanitation.

(B) Merchandise displayed, rotated and stocked sufficiently.

(C) Maintains required insurances.

(D) Maintains agreed upon hours of operation.

(E) Maintains professional relationships with customers and grantors.

(b) When a Licensed Manager applies for a facility a performance evaluation will be conducted to determine their eligibility to apply. To be eligible the manager must score at least 80 of the available 100 points. Any score above 80 will accrue to the benefit of the licensed manager in that selection process by adding it to their total score. If there is a second interview conducted, these points will not be added to the total points of the second interview.

612:25-4-59. Interview, Selection Process and Scoring

(a) All eligible applicants will be referred by the SLA to the Selection Committee for a personal interview.

(b) All personal information made available to the Selection committee and all information discussed in the course of a selection is held confidential. Information will not be released to any other individual, agency, or organization by Selection Committee members, unless they are advised in writing by the SLA's legal counsel to release information.

(c) An applicant not present at the appointed time for their interview will have his/her name removed from consideration for this location unless ~~due to~~ reasonable extenuating circumstances make them unable to appear and a majority vote of the selection committee agrees to allow a change of the interview time.

(d) Following every interview, each Selection Committee member will complete a score sheet on the applicant. Members of the Selection committee must complete their own score sheets before assisting another member. After each interview, the scores from all score sheets on the applicant will be totaled. Selection Committee members may not change their scores for an applicant after scores for the applicant have been tabulated. The total scores for all applicants will then be ranked.

(e) Any candidate not scoring a minimum of 50 percent of the available points, not including seniority, performance evaluation, or displaced manager points, will be deemed not qualified to manage the facility being considered.

(f) The score of the Chairperson of the Selection ~~Committee~~Committee's score will not be added into the ranking unless it is a tie.

(g) Any agreement made to the Selection Committee by a selected candidate will be transferred to an addendum in the manager's agreement by the BEP Operations Coordinator.

(h) After all applicants' scores from the initial interview have been tabulated, ~~any applicant whose total score is within 5 points of the applicant receiving the highest score will be awarded~~ a second interview will be given to the top scorer and any applicant whose total score is within 5 points of the top score. The SLA will have the responsibility of convening the same Selection Committee and notifying all eligible applicants of the time and place of the second interview. The second interview will be governed by the same process rules as the initial interview described above.

(i) To determine the final rankings of the applicants, combine the personal interview points from the second interview to the combined point total of the first interview.

(j) The scoring shall be based on the following factors:

(1) Personal interview;

(2) Business Plan;

(3) Performance evaluation points accrued over 80;

(4) Seniority; and

(5) Displaced manager points, if applicable. A displaced licensed manager will have 15 points added in the selection process for the first comparable business enterprise announced, including type and gross sales, for one year from the date of displacement.

(k) Once a selection is made, all individual applicants who received a personal interview will be immediately notified of their result. This notification will be in writing with an attempt to be contacted by phone.

612:25-4-60. Ninety day replacement

If the licensed manager defaults on the Manager's Agreement for any reason (i.e. resignation, removal by the SLA or death) during the first 90 days from the date of selection, the BEP Operations Coordinator will, following such default and completion of any resulting due process action, offer the business enterprise to the applicant who ranked second of the~~ two candidates submitted by the Selection Committee during~~in the previous selection process. If the second person decides to remove his/her name from consideration, it will be offered to

the next applicant with the highest accumulated points. In the event of a tie, or there are scores within five (5) points of the now highest ranking score, the procedures identified in 612:25-4-59 will be followed~~the BEP Operations Coordinator and Chairperson of the Elected Committee of Licensed Managers will review the applications and make the final selection~~. This procedure will be exercised until a qualified licensed manager accepts the business enterprise. If all the applicants have removed their names from consideration, a determination will be made by the BEP Operations Coordinator, in consultation with the ECM Chairperson, to combine, remove, re-announce, or satellite the business enterprise.

612:25-4-61. Satellite~~/remote~~ business enterprise locations

(a) A business enterprise ~~or vending machine~~ facility will be assigned to a licensed manager on a temporary basis when:~~the regular selection process does not produce a permanent licensed manager, when a licensed manager has been removed by the SLA, or when a business enterprise is vacated on short notice by a licensed manager and the time element to follow the regular selection process will cause the grantor to terminate the permit/contract with the SLA.~~

(1) the regular selection process does not produce a permanent licensed manager,

(2) a licensed manager has been removed by the SLA, or

(3) when a business enterprise is vacated on short notice by a licensed manager.

(b) The BEP Operations Coordinator, in consultation with the Chairperson of the Elected Committee of Licensed Managers, may assign a licensed manager to a satellite~~/remote~~ business enterprise ~~on a temporary basis~~. The length of the agreement for a temporary assignment will be until the regular selection process can generate a permanent licensed manager ~~to manage the vacant business enterprise~~, but not less than 180 days, unless a shorter period is agreed upon by the satellite manager. ~~At the SLA's discretion, in consultation with the ECM Chair, in~~ In order to achieve an equitable distribution of satellite business enterprises, a licensee that currently operates a ~~location and a~~ satellite location will not be eligible for an additional satellite unless there are no other applicantsqualified licensed managers interested. Licensed Managers who only qualify for lower facility classifications than the satellite under consideration may be assigned when it is deemed appropriate by the BEP Operations Coordinator, in consultation with the ECM Chairperson.

(c) ~~After the temporary assignment of a licensed manager by the BEP Operations Coordinator, a temporary agreement will be issued for a maximum of one year, at which time the satellite business enterprise will be advertised and a permanent licensed manager selected through the normal selection process. At the end of one year, if a permanent licensed manager is not produced through the selection process, the temporary location will be reassessed by the BEP Operations Coordinator, in consultation with the ECM Chairperson, for possible may be closed closure, added permanently to another business enterprise through the selection process in part or in whole, or again be placed on a temporary agreement for a period of no less than 90 days to a maximum of one year.~~ Satellite locations will be reviewed by the SLA, in consultation with the ECM, every 180 days for possible advertisement of permanent assignment, adding in whole or in part to another business enterprise facility, continue the satellite assignment, or closure. The satellite manager will be kept informed when this will occur and the result of the review.

~~(d) The temporary agreement for a satellite business enterprise may be canceled only for cause shown.~~

(~~e~~d) The licensed manager may resign the satellite agreement with 30 days written notice.

(~~f~~e) The satellite business enterprise will be managed as a separate business location for all purposes except for insurance and the tax permit. It is the licensed manager's responsibility to notify the Oklahoma Tax Commission and his or her insurance carrier of the addition and when the satellite manager agreement has ended.

612:25-4-62. Vending machine income

~~(a)~~ Collection, distribution and use of income from vending machines on Federal property shall be governed by applicable Federal rules. Income from non-Federal property will follow the same rules.

~~(b) Unassigned income from non Federal property is used to develop and enhance the BEP. Use will be determined with consultation of the ECM.~~

PART 11. BUSINESS ENTERPRISE PROGRAM AUDITING AND DUE PROCESS

612:25-4-72. Audits

The SLA reserves the right to develop audit procedures with active participation of the ECM. The SLA reserves the right to conduct audits, including the use of third party auditors. The licensed manager will be given a 30 calendar day written notice.

612:25-4-73. Due process

(a) **Due process overview.** The SLA provides procedures for fair hearings of licensed managers' grievances. These procedures provide each licensed manager the opportunity to seek remediation of dissatisfaction with any SLA action arising from the operation of the BEP.

(b) **Informal administrative review.** It is the policy of the SLA to resolve complaints in an expeditious and facilitative manner. These resolutions shall be accomplished through the informal administrative review process whenever possible. A licensed manager has the right to request a full evidentiary hearing at any time within established due process time lines. These timelines are identified late in this policy.

(1) Informal administrative reviews are conducted by the SLA staff person closest to the problem who was not involved in the action resulting in the complaint, and who can resolve the complaint in the most expeditious manner.

(2) The informal administrative review is to be completed within 30 calendar days of receipt of the complaint to the appropriate SLA staff person.

(3) The results of the informal administrative review are to be reported in writing within 15 calendar days to the BEP Operations Coordinator, with a copy going to the licensed manager affected.

(c) **Full evidentiary hearings.** Licensed managers have the right to a full evidentiary hearing to resolve dissatisfaction with any SLA action arising from the operation or administration of the Business Enterprise Program.

(1) If the complaint cannot be resolved with an informal administrative review, or in the absence of an informal administrative review, the licensed manager may request a full evidentiary hearing. The request for a full evidentiary hearing must be made to the BEP Operations Coordinator in writing within 30 calendar days from the date the licensed manager receives the notification of adverse action, or the written report of the informal administrative review. The request for a full evidentiary hearing is to be sent by certified mail. Upon receipt, the BEP Operations Coordinator will immediately forward the request to the ~~Visual Services~~Vocational Rehabilitation for the Blind & Visually Impaired Division Administrator ~~and the DRS Hearings Coordinator~~. The Licensed Manager submitting the request for full evidentiary hearing will be notified of the date it was forwarded.

(2) The licensed manager may be represented in the evidentiary hearing by legal counsel, or other representation of the licensed manager's choice, and at the licensed manager's expense.

(3) Reasonable accommodations will be arranged by the SLA upon the request of the licensed manager.

(4) The hearing will be scheduled by the SLA for a time and place convenient and accessible to the licensed manager and the SLA staff involved in the hearing. The licensed manager will be notified of the place and time of the hearing and the right to be represented by legal or other counsel in writing.

(5) The hearing will be conducted by an impartial and qualified official with no involvement or vested interest in the SLA, action at issue, or with the operation of the affected business enterprise. The presiding officer will conduct the hearing in accordance with State and/or Federal laws and rules governing the conduct of such proceedings. In any case, the hearing will be conducted in a manner that avoids delay, maintains order, and provides for a full recording and reporting of the proceedings so that a full and true disclosure of the facts and issues occurs.

(6) The hearing officer's determination will be based upon the facts as presented by both parties and upon applicable law and the existing rules of the SLA. The hearing officer does not have the power to rule upon the legality or construction of the rules themselves. The officer's decision will determine the relevant issues and facts to be ruled upon.

(7) The hearing officer shall make a written report of the evidence presented, the laws and rules used in determining a resolution, and the resolution itself. This report shall be issued to the BEP Operations Coordinator and the licensed manager, or his/her authorized representative within 15 calendar days of the conclusion of the full evidentiary hearing.

(8) The hearing officer's report shall be issued to the Director of the SLA within 15 calendar days of the conclusion of the full evidentiary hearing. The SLA Director issues his or her final written decision to the BEP Operations Coordinator and the licensed manager within 30 calendar days of the date on which he or she receives the hearing officer's report.

(9) If the licensed manager is dissatisfied with the decision, she or he may request that the Secretary (USDE) convene an arbitration panel.

SUBCHAPTER 6. LICENSED MANAGERS AND BUSINESS ENTERPRISE OPERATION

PART 1. LICENSED MANAGERS

612:25-6-1. Licensing requirements for managing a business enterprise

~~(a) **Definition of license.** A license is a written instrument issued by the SLA to a licensed manager, authorizing such person to operate a business enterprise on Federal or other property.~~

(~~b~~a) **Issuance and conditions of a license.** A license shall be issued by the SLA in accordance with Federal regulations making the individual eligible to operate a business enterprise. The license will be issued upon successful completion of the SLA training program. The license shall be prominently displayed in the licensed manager's business enterprise. Licensed Managers whose facility consists of only vending machines, must carry their BEP license with them. The license remains effective for an indefinite length of time, unless terminated, suspended, or revoked by the SLA in accordance with State and Federal regulations. A license issued to a qualified individual is non-transferable. ~~Requirements for the issuance of a BEP license are that the individual:~~

~~(1) must be blind as verified by documentation;~~

~~(2) must be a U.S. citizen. Applicable documentation must be submitted with application;~~

~~(3) be at least 18 years of age or older;~~

~~(4) have successfully completed the BEP manager training program or been granted a modification of this requirement by the BEP operations coordinator.~~

(~~c~~b) **Termination of agreement or removal from a business enterprise.** The SLA may terminate a manager's agreement and/or immediately remove the licensed manager from operation of a business enterprise for cause shown. Termination of a manager's agreement or removal from operation of a business enterprise does not necessarily mean that the manager's license will be suspended or terminated. The licensed

manager has the right to a full evidentiary hearing when dissatisfied with any State Licensing Agency action in accordance with BEP, State, and Federal regulations.

(~~d~~c) **Reinstatement of license.** Reinstatement of a BEP license for an individual can be accomplished by formally requesting the SLA reinstate the BEP License within a two year period.

(~~e~~d) **Termination of license.** A license automatically expires when the licensed manager is no longer a U.S. citizen, no longer meets the definition of legal blindness, surrenders his or her license, resigns, retires, or dies. A license may be terminated or suspended by the SLA, after affording the licensed manager an opportunity for a full evidentiary hearing in accordance with State and Federal regulations.

612:25-6-2.1. Probation

(a) **Scope.** A licensed manager who is not meeting all of the requirements or qualifications set forth in the BEP rules and regulations, or a licensed manager who is not managing the business enterprise in a proper manner, may be placed on probation. Intensive review/consultation will be provided during the probationary period. The period of the probation will be used to focus on specific problem areas and attempts will be made to improve the licensed manager's performance. This is the first step in the formal disciplinary ladder process. If proper results are not achieved, suspension or ~~revocation~~termination of the BEP License may be necessary.

(b) **Initiation of probation procedure.** The BEP Operations Coordinator will place licensed managers on probation through a probation letter. The business consultant will deliver, read and explain the letter of probation to the licensed manager. The business consultant and licensed manager will then sign the probation letter. The original is given to the licensed manager, one copy returned to the BEP Operations Coordinator, and one copy mailed to the Chairperson of the Elected Committee of Licensed Managers.

(c) **Probationary letter.** The probationary letter will specify the cause(s) for placing the manager on probation and rules that have been violated. It will clearly state the terms of the probation, including the length of the probationary period, the remedial action required and the consequences of failure to take remedial action. A statement will be included which indicates it has been read and understood by the licensed manager, followed by a space for the licensed manager's and business consultant's signature, and the date. This acknowledgement does not imply that the licensed manager agrees with the ~~charges~~issues identified, but rather, that he/she understands the terms of his/her probation. Refusal to sign does not invalidate the letter.

(d) **Probationary periods.** Probationary periods are usually 30 to 90 days, at the discretion of the BEP Operations Coordinator, but may be longer or shorter as circumstances warrant. The exact period of probation will be specified in the probationary letter.

(e) **Consequences.** The Licensed Manager or the business consultant may submit a request to the BEP Operations Coordinator that the licensed manager be taken off probation whenever the licensed manager's performance improves to a satisfactory level. If remedial action does not result in improved performance within the time specified, the BEP Operations Coordinator may recommend that:

(1) the SLA Director transfer the licensed manager to a more suitable business enterprise;

(2) the probationary period be extended; and/or

(3) the SLA Director terminate the Managers Agreement and suspend/terminate the licensed manager's BEP license.

612:25-6-3. Grounds for suspension or termination of a license

(a) A BEP license may be suspended or terminated for the reasons set forth in (1) through (13) of this Subsection.

(1) Failure to open the assigned business enterprise as stated in the permit/contract with the grantor agency, without prior proper approval from the SLA (abandonment of business enterprise).

(2) Defrauding any agency of the government (including the SLA) or any purveyor or failure to pay monies due including taxes, fees, or assessments to any governmental entity or purveyor.

(3) Failure to file required financial and other records monthly reports with the SLA or ~~preserve them for a specified time,~~ and failure to comply/cooperate with audits conducted by the SLA or other State or Federal agencies.

(4) Failure to maintain the required insurance coverage.

(5) The business enterprise is not being operated in accordance with the rules and regulations, terms and conditions of the permit with the grantor agency, or the terms and conditions of the business enterprise manager's agreement.

(6) Intentional abuse, neglect, unauthorized use or removal of the business enterprise equipment; or failure to properly maintain the equipment in a clean and operating manner within the scope of the licensed manager's level of maintenance authorization.

(7) Substance abuse (alcoholic beverages, illegal drugs, etc.) while operating the business enterprise; or other substance abuse that interferes with the operation of a business enterprise.

(8) Operation of a business enterprise in such a way that the SLA's interest in retaining the contract for the location is obviously endangered.

(9) Failure to comply with all Federal and State laws prohibiting discrimination and failure to provide services without regard to race, gender, color, national origin, religion, age, political affiliation, or disability.

(10) Determination by the SLA that the licensed manager no longer has the necessary skills and abilities for effectively managing a business enterprise.

(11) Use of the business enterprise to conduct unlawful activities.

(12) Failure to personally operate and manage the business enterprise in accordance with the manager's agreement. Management means the personal supervision of the day-to-day operation of the assigned BEP facility by the assigned manager.

(13) Does not actively work as a licensed manager or licensed employee in the Business Enterprise Program for 2 years.

(b) When the BEP Operations Coordinator determines that a BEP license should be suspended or terminated, the BEP Operations Coordinator shall make a written recommendation to the Division Administrator. The Division Administrator shall then recommend to the SLA Director for action. The licensed manager shall be notified in writing if action is to be taken. The BEP license may only be suspended or terminated after affording the licensed manager an opportunity for a full evidentiary hearing in accordance with BEP Rule 612:25-4-73. The licensed manager may be immediately removed from the operation pursuant to BEP Rule 612:25-6-1(c) pending the outcome of the evidentiary hearing.

PART 3. BUSINESS ENTERPRISES

612:25-6-15. Setting aside of funds

(a) Set-aside charges paid by the licensed manager will be placed in a revolving account maintained by the SLA. Set-aside charges will be re-evaluated yearly by the SLA and the Elected Committee of Licensed Managers. Adjustments will be made accordingly in the appropriate classification, with allowances for reasonable charges for improving services, fluctuation of costs, and for program expansion.

(b) Funds will be set aside only for the purpose of:

(1) maintenance and replacement of equipment;

(2) the purchase of new equipment;

(3) management services;

(4) assuring a fair minimum of return to licensed managers; or

(5) the establishment and maintenance of retirement or pension funds and health insurance contributions.

(c) The licensed manager's set-aside charges will be on a sliding scale of 0% to not more than 12% of the net proceeds of the business enterprise during any one month. The sliding scale will be in four classifications: Class A, B, C, and D (based on prior year's performance).

(1) Class A - 12% of net proceeds, $60,000 and above.

(2) Class B - 10% of net proceeds, $25,000 to $59,999.

(3) Class C - 6% of net proceeds, $10,000 to $24,999.

(4) Class D - 0% of net proceeds, $9,999 and below.

(d) A licensed manager will submit his/her set-aside payment to the BEP office on or before the 25th of the current calendar month. If the 25th falls on a weekend, the payment is due in the BEP office no later than the close of business on the last business day prior to the 25th. Set-aside payments may be mailed to the BEP office. To be considered on time, they must be postmarked by the 21st of the month for regular mail or the 22 for overnight mail. If these dates fall on a day where the post office is closed, they must be postmarked the day before. If the set-aside payment is late the SLA shall notify the manager by phone on the next business day following the due date. If the set-aside payment is not received in the BEP office within five calendar days after the due date, the licensed manager will be placed on probation and assessed a $50 late charge. If the licensed manager's overdue set aside payment is not received in the BEP office within five calendar days after the due date in the succeeding month (i.e. is over one month and five calendar days late), the manager is assessed another $50 late fee. If the first and second payments are not received by the time the third report is due, the licensed manager's agreement will be cancelled and the BEP licenses will be suspended, unless an alternate payment schedule has been approved in advance by the SLA. Failure to pay monthly set-aside in a timely manner three or more times within any twelve month period will result in formal disciplinary action.

(e) If a business enterprise should show a marked change in net proceeds, a request for reclassification may be made by the licensed manager or the SLA after 90 days. Each licensed manager will be notified of changes in set-aside charges, and the new percentage of net proceeds will be effective at the beginning of the first business month following the mailing of notice to the licensed manager. The licensed manager will start paying the higher or lower percentage of set-aside with the second report due following notification.

(f) All new business enterprises will be placed in class C for 90 days, at which time the SLA will review the business enterprise for reclassification and notify the licensed manager of changes in set-aside charges and the new percentage of net proceeds shall be effective at the beginning of the first business month following the mailing of notice to the licensed manager.

612:25-6-18. Establishing new licensed managers in business enterprises

Business Enterprise Program (BEP) staff will provide consultation and assistance to accomplish installation of licensed managers in business enterprises. Steps in the installation process will include the following:

(1) BEP staff will orient the new licensed manager to the business enterprise as needed.

(2) An inventory of the outgoing manager's merchandise that will be transferred to the incoming manager will be performed by the outgoing and incoming licensed managers with assistance from the BEP. The outgoing licensed manager or designee, incoming licensed manager or designee, and a representative from the BEP must be present when merchandise is counted. The completed merchandise inventory is signed by both outgoing and incoming licensed managers, accepting the count of merchandise. All items not being transferred to the incoming manager must be removed from the facility prior to the incoming manager taking responsibility for the facility.

(3) The BEP will assist the incoming licensed manager in procuring initial merchandise for sale and will arrange for the licensed manager to obtain a merchandise loan as necessary and in accordance with agency policy.

(4) An equipment inventory is completed and the incoming licensed manager signs the inventory sheet and assumes responsibility for the equipment.

(5) The BEP will assist the incoming licensed manager in filling out any insurance or retirement enrollment or change forms as necessary.

(6) The BEP will verify that workers compensation and liability insurance on the business enterprise are in effect. The business enterprise will not be opened by the new licensed manager until this is verified.

(7) The BEP will provide the incoming licensed manager with a copy of the permit/contract in effect for the business enterprise.

(8) The BEP will provide the incoming licensed manager with a supply of the forms required by the SLA relative to the business enterprise operation.

(9) The incoming licensed manager must read and sign a licensed manager's agreement before assuming the operation of any business enterprise. If needed, BEP staff will read the agreement to the manager and/or provide the agreement in the accessible format required by the manager.

612:25-6-21. Business expenses

Business expenses calculated as a flat-rate percentage of gross sales may be deducted from gross sales on the licensed manager's monthly report to the SLA. The percentage of gross sales which may be reported as a business expense deduction shall be set by the Business Enterprise ProgramSLA in consultation with the Elected Committee of Licensed Managers and shall be determined using available historical data and industry standards. The percentage rate will be reviewed annually to ensure it continues to reflect average monthly expenditures attributable to standard business expenses.

612:25-6-22. Monthly reports

(a) **Content and when due.** Licensed managers must submit monthly business enterprise financial reports to the SLA. Reports will contain data on gross sales, merchandise purchases, payroll expense, business expense and other information determined necessary to reflect business financial status and calculate licensed manager set-aside, retirement and/or merchandise loan payments. The monthly reports shall be for one of the two following time periods: 1) the sixteenth (16th) day of the previous calendar month to the fifteenth (15th) day of the current calendar month; or 2) the twenty-first (21st) day of the previous calendar month to the twentieth (20th) day of the current calendar month. The licensed manager may choose either period, but must notify the business consultant which option is chosen by September 30th of each year. The licensed manager shall use the same option throughout the federal fiscal year. Monthly reports are due in the BEP office on or before the 25th of the current calendar month. If the 25th falls on a weekend, the monthly report is due in the BEP office no later than the close of business on the last business day prior to the 25th. Monthly reports may be mailed to the BEP office. To be considered on time, they must be postmarked by the 21st of the month for regular mail or the 22nd for overnight mail. If these dates fall on a day where the post office is closed, they must be postmarked the day before. The BEP shall notify the manager by phone on the first business day following the 25th if the report is not received. The BEP will review each monthly report for mathematical errors, correct loan payment, correct set-aside payment, approved business expenses, and other factors that will affect the accuracy of the report. The business consultant will sign the report indicating that the report is correct, correct payments are attached (if required), and all items in question have been discussed with the licensed manager.

(b) **Failure to file in a timely manner.** If the monthly report is not received in the BEP office within five calendar days after the due date, the licensed manager will be placed on probation. If the 1st and second reports are not received by the time the 3rd report is due, the licensed manager's agreement will be canceled and the BEP licenses will be suspended. Failure to file monthly reports in a timely manner three or more times within any twelve month period will result in formal disciplinary action.

(c) **Fee for reports.** The Agency maintains records for its use and may charge a reasonable fee to supply copies of records to individuals. The agency will supply copies of lost reports or other documents at 25 cents per page.

[OAR Docket #15-548; filed 6-15-15]

TITLE 675. STATE BOARD OF LICENSED SOCIAL WORKERS
CHAPTER 10. LICENSURE REQUIREMENTS

[OAR Docket #15-437]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
675:10-1-3. Requirements for Licensed Social Work Associate [AMENDED]
AUTHORITY:
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INCORPORATIONS BY REFERENCE:
"n/a"
ANALYSIS:
The amendments to Rule 675:10-1-3 deletes language and eliminates the requirement of two years of supervised practice for Licensed Social Worker Associate licensure as per SB 1699 which was passed during the 2014 legislative session.

CONTACT PERSON:
James Marks, Executive Director, Oklahoma State Board of Licensed Social Workers, 3700 N. Classen Blvd. STE 162, Oklahoma City, OK 73118, 405-521-3712.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND SECTION 308(E) WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

675:10-1-3. Requirements for Licensed Social Work Associate

The Board shall authorize the issuance of licenses to persons who qualify as follows:

(1) ~~as a Licensed Social Work Associate who has a baccalaureate degree in Social work from a Board approved social work program and has two (2) years of full-time experience or the equivalent thereto of part-time experience, a total of 4,000 hours of experience, in the practice of social work under the professional supervision of a licensed social worker, licensed clinical social worker or licensed social worker with administration specialty. This experience shall include at least 100 hours of face-to-face educational supervision by the supervisor. Ratings on the final evaluations completed by supervisor(s) must document performance at a level meeting requirements as defined on the forms approved by the Board, in all areas of evaluation or who has a master's degree in social work from a Board approved social work program and has passed the examination provided for under Section 675:10-1-10~~as a Licensed Social Worker Associate who has a bachelor's degree in social work from a Board approved social work program

(2) passed the examination provided for under the provisions of Section 675:10-1-10, and

(3) is of good moral character.

[OAR Docket #15-437; filed 6-11-15]

TITLE 675. STATE BOARD OF LICENSED SOCIAL WORKERS
CHAPTER 12. GUIDELINES FOR SUPERVISION

[OAR Docket #15-438]

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675:12-1-2. Supervision [AMENDED]
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ANALYSIS:
The proposed amendments to Rule 675: 12-1-2 deletes language and eliminates the requirement of two years of supervised practice for Licensed Social Worker Associate licensure as per SB 1699 which was passed during the 2014 legislative session.
CONTACT PERSON:
James Marks, Executive Director, Oklahoma State Board of Licensed Social Workers, 3700 N. Classen Blvd. STE 162, Oklahoma City, OK 73118, 405-521-3712.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND SECTION 308(E) WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

675:12-1-2. Supervision

(a) **Licensed clinical social worker.** The two year supervised experience requirement for licensure as a LCSW must be under the supervision of a social worker holding the LCSW license.

(b) **Licensed master social worker.** No supervision is required for the LMSW.

(c) **Licensed social worker.** The two year supervised experience requirement for licensure as a LSW must be under the supervision of a social worker holding the LSW, LSW-Adm or LCSW license.

(d) **Licensed social worker with a specialty of administration.** The two year supervised experience requirement for licensure as a LSW-Adm must be under the supervision of a social worker holding the LSW-Adm license.

(e) **Licensed social worker associate.** ~~The two year supervised experience requirement for licensure as a Licensed Social Work Associate must be under the supervision of a social worker holding the LSW, LSW-Adm or LCSW license.~~No supervision is required for the LSWA.

[OAR Docket #15-438; filed 6-11-15]

TITLE 690. BOARD OF EXAMINERS FOR SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY
CHAPTER 10. LICENSURE AND FEES

[OAR Docket #15-448]

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RULES:
Subchapter 3. Licensure of Speech-Language Pathologists and Audiologists
690:10-3-6. Clinical experience requirement [AMENDED]
690:10-3-7. Examination requirement and exceptions [AMENDED]
690:10-3-8. Continuing education (CE) for speech-language pathologists, audiologists, and speech-language pathology assistants [AMENDED]
Subchapter 5. Licensure of Speech-Language Pathology Clinical Experience Interns Completing Post-Graduate Clinical Experience~~.~~
690:10-5-3. ~~Prohibition of private practice by~~Representation of clinical experience intern ~~interns~~ as independent practitioner [AMENDED]
690:10-5-6. Requirements for supervision of clinical experience interns [AMENDED]
Subchapter 7. Licensure of Speech-Language Pathology Assistants and Audiology Assistants
690:10-7-3. Supervision required [AMENDED]
690:10-7-9. Academic requirements [AMENDED]
AUTHORITY:
Board of Examiners for Speech-Language Pathology and Audiology; 59 O.S., 2011 § 1613.
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ANALYSIS:
The amendments to Subchapter 3 correct outdated language describing the approved exam, and add new language about licensure by reciprocity. The continuing education requirements are amended to specify that at least 3 clock hours must be on ethics. The amendment to Subchapter 5 clarify independent practice for clinical interns and adds new language requiring 6 hours of training for supervisors of clinical interns, effective January 2017. Subchapter 7 is amended to also require 6 hours of training for supervisors of speech-language pathology assistants, effective January 2017. The proposed changes also eliminate certain aspects of the clinical experience requirement for speech-language pathology assistants.
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 3. LICENSURE OF SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

690:10-3-6. Clinical experience requirement

(a) **Clinical experience form.**

(1) Each speech-language pathology applicant shall submit evidence (Clinical Experience Form) of no less than nine (9) months of successful, full time, paid, clinical experience in the area for which a license is required, obtained under the supervision of one or more practitioners who ~~have been fully licensed for a minimum of two years under the Speech-Language Pathology and Audiology Licensing Act, 59 O.S. 1601. Et. Seq., as amended.~~meet the requirements for supervision of clinical experience interns set forth in subchapter five of this chapter. This supervision must entail the personal and direct involvement of the supervisor in any and all ways that will permit the supervisor to evaluate the applicant's performance in professional clinical employment and must include direct observation. The applicant and the supervisor must list and describe the methods of supervision employed. Specific information should be given regarding the professional activity supervised, the number of supervisory contacts per month, and the length of each supervisory contact. The supervisor shall base the total evaluation on no less than thirty-six (36) supervisory visits. This experience must follow completion of the requirements of 690:10-3-3 and 690:10-3-6. "Full-time" is defined as at least thirty (30) hours per week; the nine (9) months of full time paid experience must be obtained within a period of twenty-four consecutive months. This requirement may also be fulfilled by eighteen (18) months of half time paid experience of at least fifteen (15) hours per week, which must be completed within a period of thirty-six (36) consecutive months.

(2) With the exception of audiology applicants with a post-masters distance education professional degree (Au.D.) or applicants with a Ph.D. with a major emphasis in audiology, each audiology applicant will be required to present to the Board a copy of an Au.D. degree diploma, or its equivalent, from an accredited academic institution in order to demonstrate completion of the clinical rotation or externship requirement.

(b) **Waiver of clinical experience requirement.** The Board hall waive the clinical experience requirement and grant a license to any applicant who holds the Certificate of Clinical Competence of the American Speech-Language-Hearing Association or its current equivalent in the area for which he is applying for licensure, provided that the current requirements for such certification are equivalent to or greater than those for licensure under the Speech-Language-Pathology and Audiology Licensing Act, 59 O.S. 1601 et. Seq., as amended. The current requirements for the Certificate of Clinical Competence of the American Speech-Language-Hearing Association are deemed the equivalent of those for licensure under the Act. Evidence of such certification shall be received by the Board directly from the American Speech-Language-Hearing

Association. All fees associated with obtaining such evidence shall be borne by the applicant.

690:10-3-7. Examination requirement and exceptions

(a) **Examination.** All applicants for licensure as a speech-language pathologist and/or audiologist must present evidence of successful completion of the examination approved by the Board. The examination must be passed within two (2) years after board approval of the applicant's first application for ~~licensure~~a clinical experience intern license. Failure to pass the examination within this time period shall result in revocation of authorization to practice as a clinical experience intern under supervision as defined in Subchapter ~~7~~5 of this Chapter.

(1) The Board designates as its approved examinations the ~~Area Examination in Speech-Language Pathology or the Area Examination in Audiology offered as part of the National Teachers Examinations (NTE), Education Testing Service, Princeton, New Jersey, as the State Licensure Examination for speech-language pathologists and audiologists, respectively~~most current versions of the Educational Testing Service (ETS) Praxis II Audiology Exam and the Praxis II Speech-Language Pathology Exam, or any other national examination recognized by the Board to have similar standards equal to or higher than the ETS Praxis II exams. It shall be the responsibility of the applicant to assure that the testing vendor~~his score on the appropriate Area Examination~~forwards the examination score~~is forwarded by NTE~~ to the Board.

(2) An applicant who fails ~~his~~an examination may ~~be re-examined at subsequent examinations~~retake it upon payment of another examination fee to ~~NTE~~the testing vendor and at any time the testing vendor. ~~Re-examination of applicants who fail the examination is possible only at~~regularly~~administrations~~administers~~of~~ the ~~National Teacher Examinations~~ETS Praxis II Audiology and Speech-Language Pathology exams. Arrangements and fees are the responsibility of the applicant.

(3) Exceptions to the two year requirement may be granted by the Board under extenuating circumstances.

(b) **Waiver of examination.** The Board shall waive the examination and grant a license to any applicant who holds the Certificate of Competence of the American Speech-Language-Hearing Association or its current equivalent in the area for which he is applying for licensure, provided that the current requirements for such certification are equivalent to or greater than those for licensure under the Speech-Language Pathology and Audiology Licensing Act, 59 O.S. 1601, et. seq., as amended. The current requirements for the Certificate of Clinical Competence of the American Speech-Language-Hearing Association are deemed the equivalent of those for licensure under the Act. Evidence of such certification shall be received by the Board directly from the American Speech-Language-Hearing Association. All fees associated with obtaining such evidence shall be borne by the applicant.

(c) **Reciprocity.** ~~An applicant for licensure in speech-language pathology under the reciprocity provisions of Subsection B of Section 1606 of the Speech-Language Pathology and Audiology Licensing Act, 59 O.S. 1606, as amended, may be so licensed if he possesses a current license of certificate in speech language pathology granted by a legally constituted board (a board established by legislation) and which was granted only on the basis of qualifications which were not less than those of the Act at the time the license was issued. Evidence of equivalence shall be provided by the applicant.~~The Board may issue a license without examination to a person who holds a current license in another state or country in speech-language pathology or audiology according to the following conditions:

(1) the other state or country maintains a system and standard of qualifications and examinations for speech-language pathologists and audiologists which meet or exceed the current requirements for licensure in Oklahoma;

(2) payment of the Board's current fee for licensure; and

(3) submission of evidence satisfactory to the Board of proof of licensure in good-standing in another state or country.

(d) The Board shall expedite the process of licensure by reciprocity for applicants whose spouse is an active duty member of the armed forces of the United States if:

(1) the military service member is on active duty within Oklahoma or claims permanent residency within Oklahoma for the six (6) months prior to assignment to active duty or during the period of the active duty and

(2) the applicant left employment in another state to accompany the military service member spouse to Oklahoma.

690:10-3-8. Continuing education (CE) for speech-language pathologists, audiologists, and speech - language pathology assistants

(a) **Purpose.** The purpose of continuing education requirements for speech-language pathologists and audiologists is to assure that licensees update and advance their skills such that the public shall benefit from the most current and effective standards of professional practice. To further the goal of public benefit, all speech-language pathologists and audiologists are encouraged to fulfill a portion of their Continuing Education requirements in the area of ethics, professional conduct, and related legal issues.

(b) **Clock hours required for license renewal.** A licensee must obtain~~A~~a minimum of twenty (20) clock hours of acceptable continuing education, including at least three clock hours of professional ethics ~~will be required for renewal of a license to practice speech language pathology or audiology~~ in a two year period. The continuing education period begins in January of every odd-numbered year. A speech-language pathologist or audiologist obtaining initial licensure during a two year period shall have his or her continuing education requirement prorated to 2.5 clock hours per full quarter remaining in that period. If pro-rated hours are less than five clock hours, the requirement for at least three clock hours of ethics does not apply.

(c) **Approval of continuing education activities required.** Continuing education hours may be granted for acceptable educational activities which are approved by the Board, or by a committee appointed by the Board. No hours will be granted for any activities or categories of activities that have not been approved. A provider of educational activities may apply to the Board for pre-approval of an activity. The provider shall be responsible for compliance with the standards for approval of the activity, verification of participation, and for the provision of the necessary verification of attendance forms to all participants. This verification of attendance form shall include: The participant's name, the presenter's name and credentials, the presentation topic, the program sponsor or agency, the location of the presentation, the dates of presentation, and the total number of clock hours attended. A list of preapproved activities is available on the website or by contacting the board office. Any activity not included on this list will require approval by the Board for credit.

(d) **Exceptions to the requirements.** Exceptions to the pre-approval requirement may be granted at the discretion of the Board for programs presented by recognized sponsors whose programs have been pre-approved by the Board. The university academic semester hour is equivalent to fifteen (15) clock hours, and shall be verified by the presentation of an official academic transcript showing course or audit credits. The licensee is ultimately responsible for providing all information necessary for the Board to make a final determination concerning the acceptability of any requested continuing education hours.

(e) **Fee for approval.** Providers of continuing education programs may be charged a fee for approval of their program. This fee shall be set by the Board.

(f) **Kinds of educational activities for which credit may be received.** Continuing education hours may be earned through formal organized learning experiences, scientific publications, attendance at regularly scheduled meetings of international, national, regional, or state professional associations, or through presentations to appropriate groups not related to the speech-language pathologist's or audiologist's regular employment.

(g) **Hours allowed.** Continuing education activities, whether received or presented by the speech-language pathologist or audiologist, must be targeted toward a professional audience. In those instances when the speech-language pathologist or audiologist is teaching in programs such as institutes, university or college courses, seminars, workshops, and conferences which have been granted approval by the Board, three (3) clock hours will be given for each one (1) hour that is taught, provided that such teaching is not part of the speech-language pathologists or audiologists regular employment. Publication in a professionally- related format approved by the Board shall be equal to up to twenty (20) clock hours. Completion of select job-required activities such as CPR training, etc. can be counted once in the two-year period for a maximum of 20% of the total required hours. Other activities may be credited as authorized and disseminated separately by the Board.

(h) **Petition for extension.** A speech-language pathologist or audiologist who fails to comply with the required twenty (20) hours of continuing education in the two year continuing education period ending December 31 may, by submitting an individual review fee of fifty ($50.00), petition the Board for a ninety (90) day extension. Failure to meet this deadline may result in disciplinary action. The petition for extension shall be filed prior to the expiration of the continuing education period.

(i) **Petition for hardship relief.** A speech-language pathologist or audiologist may petition the Board for partial or complete relief of the continuing education requirements upon the showing of incapacitation or serious illness of licensee or licensee's immediate family member, or licensee's absence from the United States for a period of at least eighteen (18) months during the continuing education period. The petition for hardship relief should be filed prior to the expiration of the continuing education period, and will be accepted no later than February 1st of the year following the audit period.

(1) Individuals with medical disabilities must provide evidence that documents the inability to work in the professions, such as a letter from a doctor or a Social Security Administration determination letter. Individuals with medical disabilities will be required to sign an affidavit confirming that they are not providing or supervising the provision of clinical services. In addition, individuals with temporary medical disabilities will be required to affirm every two years that they continue to be classified as medically disabled.

(2) Members of the armed forces on full-time active duty will be required to provide a copy of their deployment orders and a signed affidavit stating they will not practice during their deployment. They will be assigned a new 2-year maintenance interval that will start on January 1 of the year following their return. If licensees are deployed for the purpose of providing clinical services or supervising the provision of clinical services, an exemption will be considered on a case-by-case basis.

(j) **Audits of continuing education.** The Board will conduct audits every two years (every even year) of licensee compliance with continuing education requirements.

(1) A minimum of 3% of licensees will be audited.

(2) Those audited will be required to submit a listing of all continuing education activities completed within the audited period, including the title of the activity, the course description, the number of contact hours and a contact for verification of participation.

(3) Licensees will maintain all original documentation of attendance, course agendas and/or other supporting documentation. The Board may request copies of such documentation as is necessary to determine if an activity will be accepted for continuing education credit. The Board will destroy all such copies following the audit.

(4) Licensees found to be non-compliant with the continuing education requirement shall have ninety (90) calendar days from receipt of notification of continuing education deficiency to provide evidence of continuing education hours sufficient to meet this requirement AND must pay a penalty fee equal to half of the licensure renewal fee. This fee is in addition to any fees for late license renewal. Such hours may not be counted toward

fulfillment of future continuing education requirements. Failure to provide evidence of continuing education hours within the ninety (90) calendar day period may result in disciplinary action.

(A) obtain Continuing Education hours sufficient to meet this requirement;

(B) submit verifications of completion to the Board;

(C) pay a penalty fee equal to half of the licensure renewal fee. This fee is in addition to any fees for late license renewal. Such hours may not be counted toward fulfillment of future Continuing Education requirements. Failure to comply with the provisions of the paragraph within the ninety (90) calendar day period may result in disciplinary action.

SUBCHAPTER 5. LICENSURE OF SPEECH-LANGUAGE PATHOLOGY CLINICAL EXPERIENCE INTERNS COMPLETING POST-GRADUATE CLINICAL EXPERIENCE~~.~~

690:10-5-3. ~~Prohibition of private practice by~~Representation of clinical experience ~~interns~~ intern as independent practitioner

~~The applicant is considered to be requesting entrance into practice as a licensed speech language pathologist and/or audiologist. The applicant, if authorized to practice under supervision,~~A licensed clinical experience intern~~is not authorized to~~shall not~~represent himself as a speech lanugae pathologist or audiologist who may~~ state, imply or otherwise represent that he or she is authorized to practice independently without the supervision of a licensed speech-language pathologist. Preparation or distribution of announcements of practice, independent telephone listings, internet or social media advertisements or other such notices or representations which indicate or imply that the clinical experience intern is an independently licensed speech-language pathologist shall be ~~in violation of the authorization to practice as an intern under supervision and will result in automatic revocation of authorization to practice as a clinical experience intern.~~ considered unprofessional conduct, and will result in discipline as authorized by the Speech-Pathology and Audiology Licensing Act.

690:10-5-6. Requirements for supervision of clinical experience interns

(a) Clinical experience interns must be supervised by a speech-language pathologist who has been ~~fully~~ licensed for a minimum of two years. Licensure as a clinical experience intern does not count toward the two-year license requirement.

(b) Each supervising speech-language pathologist shall accept no more than two clinical experience interns. Each supervisor holding licenses in both speech-language pathology and audiology is restricted to no more than two persons to supervise, in ~~the~~ aggregate.

(c) Beginning January 2017, the supervising speech-language pathologist must have successfully completed at least six hours of Board approved training in clinical supervision. Three hours must include instruction in the knowledge and skills areas necessary for clinical experience supervisors as identified by the American Speech-Language Hearing Association (ASHA), other organizations, or entities the Board deems acceptable.

SUBCHAPTER 7. LICENSURE OF SPEECH-LANGUAGE PATHOLOGY ASSISTANTS AND AUDIOLOGY ASSISTANTS

690:10-7-3. Supervision required

(a) The speech-language pathology assistant must be supervised by a speech-language pathologist who has been ~~fully~~ licensed for two years. Each supervisor shall accept no more than two assistants. Licensure as a clinical experience intern does not count toward the two-year license requirement. Each practitioner licensed in both speech-language pathology and audiology is likewise restricted to two assistants in aggregate. Further, the total number of assistants and interns (licensed under Subchapter 3 of these rules) supervised by a single supervisor shall not exceed two.

(b) Beginning January 2017, the supervising speech-language pathologist must have successfully completed at least six hours of Board approved training in clinical supervision. Three hours must include instruction in the knowledge and skills areas necessary for speech-language pathology assistant's supervisors as identified by the American Speech-Language Hearing Association (ASHA), other organization or entity the Board deems acceptable.

(~~b~~c) A speech-language pathology assistant shall practice under a minimum of 30% supervision weekly, of which 20% is direct and 10% is indirect for the first 90 workdays. After successful completion of the first 90 workdays, a minimum of 10% of direct supervision is required with 20% indirect supervision. The supervising speech-language pathologist must be available by electronic means at all times when the speech-language pathology assistant is performing clinical activities. The supervision must be documented in the client/patient record and on a supervision log. Records of supervision are subject to inspection by the Board.

(1) Direct supervision: in-view observation and guidance by a speech-language pathologist while the speech-language pathology assistant is providing an assigned clinical service to a patient. While directly supervising, the speech-language pathologist may not perform any clinical services unrelated to the client/patient receiving services from the speech-language pathology assistant.

(2) Indirect supervision means the supervising speech-language pathologist is ~~not at the same facility or in close proximity to the speech language pathology assistant, but is available to provide supervision by electronic means~~engaged in supervisory activities other than direct supervision, observation and guidance of the

assistant while the assistant is providing an assigned clinical service to a patient. Indirect supervision activities performed by the supervising speech-language pathologist may include but are not limited to demonstration, record review, review and evaluation of audio or videotaped sessions, and interactive television and supervising conferences that may be conducted by telephone, email or live webcam.

(~~c~~d) The supervising speech-language pathologist is responsible for exercising his or her professional judgment to determine the appropriate level of supervision at or above the required minimum necessary to ensure that each client/patient receives competent services. The supervising speech-language pathologist should consider:

(1) the individual speech-language pathology assistant's knowledge, experience and competence;

(2) the treatment setting;

(3) the client/patient's diagnosis/prognosis; and

(4) the nature of the assigned clinical service.

(~~d~~e) For audiology assistants, direct supervision is required when the assistant is performing activities involving direct patient care. Direct supervision requires the supervising audiologist to be present on-site for supervision and guidance of the assistant. Indirect supervision of the audiology assistant is permissible when the audiology assistant is performing duties or activities that do not involve direct patient care. Indirect supervision requires the supervising audiologist to be available for instruction or guidance but does not require the supervising audiologist to be present on-site. The audiology assistant must be supervised by an audiologist who has been fully licensed for two years. Each supervisor shall accept no more than two assistants.

690:10-7-9. Academic Requirements

(a) Academic requirements for speech-language pathology assistants

(1) Each speech-language pathology assistant applicant shall hold not less than an associate's degree, or its equivalent, with a major emphasis in speech-language pathology from an accredited academic institution.

(2) Each speech-language pathology assistant applicant shall submit a bona fide official transcript(s) and verification of academic preparation and clinical experience reflecting a minimum of eighteen (18) semester credit hours in general education, a minimum of twenty (20) semester credit hours in technical content, a minimum of twenty five (25) hours of observation which precede a minimum of 100 clock hours of supervised clinical experience.

(A) **General education.** Applicants must earn at least eighteen (18) semester credit hours in oral and written communication, mathematics, computer applications, social sciences and natural sciences.

(B) **Technical content.** Applicants must earn a minimum of twenty (20) semester credit hours in the following areas:

(i) Normal processes of communication.

(ii) Overview of communication disorders.

(iii) Instruction in assistant-level service delivery practices.

(iv) Instruction in work-place behaviors.

(v) Cultural and linguistic factors in communication.

(vi) Observation experiences include direct on-site observation of a fully licensed speech-language pathologist. Additional observation experiences may include on-site, video or digital observation of a fully licensed speech-language pathologist.

(C) **Clinical experience.** Applicants must complete 100 clock hours of clinical experience supervised by a speech-language pathologist.~~who has been fully licensed for a minimum of two years.~~

~~(i) The student must be supervised a minimum of 50% of the time when engaged in patient/client contact.~~

~~(ii) The supervising speech-language pathologist will supervise no more than two assistant students at any one time.~~

~~(iii)~~ The clinical experience requirement must be completed through an accredited academic institution with a Board approved degree program.

(b) Academic requirements for audiology assistants. Each audiology assistant applicant shall hold not less than a high school diploma or its equivalent.

[OAR Docket #15-448; filed 6-11-15]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #15-420]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 3. Public Policy
Part 3. Taxpayer Identification
710:1-3-6 [AMENDED]
710:1-3-7 [REVOKED]
Subchapter 5. Practice and Procedure
Part 1. General Provisions
710:1-5-1 [AMENDED]
Part 3. Description of Administrative Review and Hearings
710:1-5-10 [AMENDED]
710:1-5-11 [AMENDED]
710:1-5-17 [AMENDED]
Part 5. Administrative Proceedings Related to Tax Protests
710:1-5-21 [AMENDED]
710:1-5-25 [AMENDED]
710:1-5-42 [AMENDED]
Part 8. Settlement of Tax Liability
710:1-5-92 [AMENDED]
Part 10. Business Compliance Proceedings
710:1-5-117 [AMENDED]
Part 11. Disqualification of Persons Representing Taxpayers before the Oklahoma Tax Commission
710:1-5-200 [AMENDED]

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Sections **710:1-3-6, 710:1-5-17, 710:1-5-25** and **710:1-5-117** have been amended, and **710:1-3-7** has been revoked to reflect a change in policy regarding the inclusion of a taxpayer's social security number on payment instruments and certain returns, applications and forms.

Section **710:1-5-42** has been amended to reflect the provisions of Senate Bill 864 [2013] which amended the appeal process for any taxpayer aggrieved by a final order of the Tax Commission assessing a tax or an additional tax or denial of a claim for refund. **[68:225]**

Sections **710:1-5-1, 710:1-5-10, 710:1-5-11, 710:1-5-21, 710:1-5-92, 710:1-5-117** and **710:1-5-200** have been amended, changing *Rules of Practice and Procedure before the Oklahoma Tax Commission* to *Rules of Practice and Procedure before the Office of the Administrative Law Judges* and also updating the internal cross-references.
CONTACT PERSON:
Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 3. PUBLIC POLICY

PART 3. TAXPAYER IDENTIFICATION

710:1-3-6. Use of Federal Employer Identification Numbers~~, Social Security Numbers~~ and other identification numbers mandatory

All returns, applications, and forms required to be filed with the Oklahoma Tax Commission (Commission) in the administration of this State's tax laws shall bear the **Federal Employer's Identification Number(s),** ~~the **Social Security Account Number,**~~ the **Taxpayer Identification Number,** and/or other government issued identification number of the person, firm, or corporation filing the item and of all persons required by law or agency rule to be named or listed. ~~If more than one number has been issued to the person, firm, or corporation, then all numbers will be required.~~

710:1-3-7. Checks made payable to the Oklahoma Tax Commission; use of Federal Employer Identification Numbers, Social Security Numbers mandatory [REVOKED]

~~All checks made payable to the Oklahoma Tax Commission shall bear the **Federal Employer's Identification Number(s)** or the **Social Security Account Number** (or both) of the person, firm, or corporation issuing or drawing the check, or that of the person, firm, or corporation on whose behalf the check is given.~~

SUBCHAPTER 5. PRACTICE AND PROCEDURE

PART 1. GENERAL PROVISIONS

710:1-5-1. Purpose

The provisions of Subchapter 5 have been promulgated for the purpose of compliance with the Oklahoma Administrative Procedures Act, 75 O.S. §§302, 305, and 307. The various procedural processes, both formal and informal, by which a party aggrieved by any action of the Commission in the performance of its functions may seek a remedy are described in Subchapter 5.

(1) The provisions of Part 3 are intended to **describe** the various procedures, both formal and informal, by which a taxpayer may seek redress of a grievance or seek to have a particular suggestion or complaint considered by the Commission, pursuant to the various remedial avenues provided by statute.

(2) The provisions of Part 5 of this Subchapter **prescribe** the formal Rules of Practice and Procedure before the ~~Oklahoma Tax Commission~~Office of the Administrative Law Judges, particularly with respect to protests of tax assessments and protests of denials of claims for refunds of taxes paid.

(3) The provisions of Part 7 govern the procedures for the consideration and disposition of a request for an abatement or adjustment of an alleged erroneous tax assessment.

(4) Finally, Part 9 of this Subchapter addresses procedures which govern the administrative proceedings dealing with the granting, suspension, and revocation of various permits and licenses which fall within the administrative purview of the Commission.

PART 3. DESCRIPTION OF ADMINISTRATIVE REVIEW AND HEARINGS

710:1-5-10. Tax protests and claims for refund

(a) A **protest** may be described as a formal, written challenge to a proposed tax assessment or to the denial of a claim for refund of taxes paid. The statutory requirements for perfecting a protest or claim for refund are governed, generally, by the provisions of the Uniform Tax Procedure Code (68 O.S. §§ 201 et seq.), except in the areas of Income Tax (Article 23 of Title 68 of the Oklahoma Statutes) and Estate Tax (Article 8 of Title 68 of the Oklahoma Statutes) which have additional, and in some instances, superseding, statutory requirements.

(b) There are several routes available, both formal and informal, to a taxpayer in objecting to an assessment. Prior to the filing of a protest, the issues may be resolved by further discussion with the assessing tax division. Challenged assessments or audits may be amended or adjusted by the tax Division involved, upon reasoned grounds and adequate documentation. Should issues remain unresolved after consulting with the assessing division, the taxpayer may file written protest with the taxing division. A protest must be "timely filed." That is, it must be filed on, or before, the statutory time provided for filing protests, to insure that the protestant-taxpayer preserves his legal rights to a full hearing of the matter and a route for appeal if the disposition of the protest is not resolved in his favor. In the absence of a formal written extension of time within which to file a protest, **proposed assessments which are not protested within the time prescribed by statute are considered final.** Any finally assessed tax in such a case which is paid to or collected by the Tax Commission is not subject to a claim for refund or hearing thereon, to the extent provided in 68 O.S. § 227(f). Thus, a taxpayer who receives a notice of proposed assessment of tax from the Tax Commission should not assume that it can be challenged later by way of a claim for refund, if a protest of the proposed assessment is not timely filed and the proposed assessment then becomes final. However, a taxpayer who fails to file a timely protest may, within one (1) year of the date the assessment becomes final, request the Tax Commission to adjust or abate the assessment pursuant to 68 O.S. § 221(e) and the provisions of Part 7 of this Subchapter.

(c) The following is a brief description of a typical protest that would take place within the framework of the Oklahoma Tax Commission administrative proceedings process.

(1) Initially, an audit is conducted by one of the various taxing Divisions of the Oklahoma Tax Commission pursuant to 68 O.S. § 221(a). Thereafter, a proposed assessment is issued to the taxpayer. If, in fact, the taxpayer disagrees with the proposed assessment, a protest may be filed, generally within sixty (60) days of the date of the assessment, pursuant to the provisions of 68 O.S. § 221(c).

(2) Except for the initial filing of a protest, which may be made with the taxing division, with the Office of the General Counsel, or with the office of the Administrative Law Judges, the office of the Administrative Law Judges serves as the "Court Clerk" for the administrative hearing process. The Administrative Law Judges are appointed by the Commissioners of the Oklahoma Tax Commission and act independently of the taxing Divisions and the Office of the General Counsel.

(3) Once a protest is received by the taxing Division, the Division will generally review the proposed assessment to determine whether further adjustments are appropriate. Additional discussion between the taxpayer and the Division may be requested in this regard. If issues still remain unresolved at the conclusion of this process, the protest is forwarded to the Administrative Law Judges' Office, where the protest is docketed and a Pre-Hearing Conference is scheduled between the taxpayer, the General Counsel's Office attorney who represents the taxing Division and an Administrative Law Judge.

(4) At this time, a case may be resolved through discussion and negotiation with the staff attorney and the protest or claim is formally withdrawn from the docket, at the request of the parties. This informal resolution may be described as either a withdrawn assessment or a withdrawn protest, depending upon the manner in which the issues were resolved.

(5) Generally, the manner in which a case is to be submitted is decided by the parties at the Pre-Hearing Conference. Other matters decided at this conference are the legal issues of the case and the manner of evidence or witnesses (or both) to be presented at any hearing. Taxpayers are urged to respond to letters; appear or make alternate arrangements at scheduled pre-hearing conferences and hearings; file required briefs or position letters in a timely fashion; and in all respects pursue their legal rights diligently.

(6) Following the Pre-Hearing Conference, and assuming the case is not resolved, it is set for hearing. The Administrative Law Judge will preside at the hearing, wherein testimony and exhibits are received and a record is made. After consideration of the merits, the Administrative Law Judge will issue Findings, Conclusions and Recommendations.

(7) Following the issuance of the Findings by the Administrative Law Judge, the Commissioners may either adopt the Finding, or modify it, in part, or in whole. If the taxpayer has requested an en banc hearing, the Commission may grant it at this time. Once the Order of the Commission is issued, the Taxpayer has thirty (30) days within which to file an appeal with the Oklahoma Supreme Court.

(8) Detailed procedural rules governing a tax **protest** may be found in 710:1-5-21 through ~~710:1-5-48~~710:1-5-49, which set out rules of Practice and Procedure before the ~~Commission~~Office of the Administrative Law Judges.

710:1-5-11. Petitions for abatement

(a) A **petition or request for abatement or adjustment** of a tax assessment is a procedure by which a taxpayer may request relief from an assessment which has become **final**, but which the taxpayer may show, by a preponderance of the evidence, that the assessment contested was clearly erroneous. The determination of such a petition or request is within the sole discretion of the Commission pursuant to the provisions of 68 O.S. § 221(e) and is not subject to appeal.

(b) The procedures for the filing, consideration, and disposition of **petitions for abatement or adjustment of a tax assessment** are set out in 710:1-5-70 through 710:1-5-78.

(c) Procedures governing an abatement or adjustment request are exclusive and must be clearly distinguished from the procedures required for filing a timely protest of a proposed tax assessment or a protest of a denial of a claim for refund of taxes. Tax **protest procedure** is governed by the provisions of 710:1-5-21 through ~~710:1-5-48~~710:1-5-49, which set out general rules of Practice and Procedure before the ~~Commission~~ Office of the Administrative Law Judges.

710:1-5-17. Petitions for declaratory rulings

(a) **General provisions.** The Commission or its duly authorized agent may issue declaratory rulings, as to the applicability of any **rule** or principle of law embodied in a precedential **decision** of the Commission, which is requested by or on behalf of a person directly affected thereby, subject to the terms and conditions set forth in this Section.

(b) **Form of petition; where to file.** A declaratory ruling petition must be made in writing and sent in duplicate to the Secretary-Member, Oklahoma Tax Commission, 2501 N. Lincoln Boulevard, Oklahoma City, Oklahoma 73194.

(c) **Contents of a petition for a declaratory ruling.** A declaratory ruling petition must specifically state:

(1) That a "declaratory ruling is requested pursuant to 710:1-5-17";

(2) The petitioner's

(A) Name (the name of the person, partnership, corporation or entity to whom the facts presented in the petition apply);

(B) Address and phone number;

(C) ~~Social Security or federal~~Federal identification number, if applicable; and

(D) Appropriate OTC license, registration or identification number, where applicable.

(3) The type of tax, fee, bond, registration, license, or permit at issue;

(4) The issue(s) on which a declaratory ruling is requested, stated clearly and concisely;

(5) A complete, clear and concise statement of all relevant facts on which the declaratory ruling is requested;

(6) The petitioner's desired result and the legal basis for that result, including reference to the applicable statutes, rules, regulations, and case law;

(7) Whether the issue, as it regards the petitioner, is presently under investigation or audit by the Commission or any of its agents. The term investigation or audit includes, but is not limited to, an inquiry, audit, refund, assessment, suspension or revocation proceeding by the Commission; and

(8) Whether the petitioner is presently pursuing any protest, litigation or negotiation on the issue with the Commission or any of its Divisions, as well as the name of any other person, partnership, corporation or entity whom the petitioner or a duly authorized representative knows is involved with the identical issue pending before or with the Commission.

(d) **Petition must bear authorized signature.** A petition for a declaratory ruling must be signed by the petitioner or an authorized agent of the petitioner.

(e) **Proposed draft may be offered.** The petitioner may provide a **draft** ruling for the Commission's consideration.

(f) **Commission may require additional information.** The Commission or its authorized representative may request additional information from the petitioner as deemed necessary to issue a declaratory ruling. Failure to provide the requested information shall result in denial of the petition to issue the declaratory ruling.

(g) **Effect of a declaratory ruling.** A declaratory ruling shall have the following effect:

(1) The declaratory ruling shall apply only to the particular fact situation stated in the declaratory ruling petition;

(2) The declaratory ruling shall apply only to the petitioner;

(3) The declaratory ruling shall bind the Commission, its duly authorized agents and their successors only prospectively;

(4) The declaratory ruling shall bind the Commission, its duly authorized agents and their successors as to transactions of the petitioner that occur within three (3) years after the date of the issuance of the declaratory ruling; and

(5) The declaratory ruling may be revoked, altered, or amended by the Commission at any time.

(h) **Exceptions to binding effect of declaratory ruling.** The declaratory ruling shall cease to be binding if:

(1) A pertinent change is made in the applicable law by the Legislature;

(2) A pertinent change is made in the Commission's rules;

(3) A pertinent change in the interpretation of the law is made by a court of law or by an administrative tribunal; or

(4) The actual facts are determined to be materially different from the facts set out in the petitioner's declaratory ruling petition.

(i) **Issuance of a declaratory ruling.** The Commission will make a good faith effort to issue a declaratory ruling within ninety (90) days from date of receipt of a complete and proper petition unless, in the Commission's discretion, the issue is of such complexity or novelty that additional time is required.

(j) **Contents of a declaratory ruling.** A written response from the Commission or from any employee or agent of the Commission to an inquiry from a taxpayer may not be construed to be a declaratory ruling unless made in conformity with this Subsection. A declaratory ruling must contain:

(1) A statement that: "This is a declaratory ruling issued by the Oklahoma Tax Commission pursuant to 75 O.S. 1991, § 307;" and

(2) The signature of the Commission or any person duly authorized to issue declaratory rulings on its behalf.

(k) **Denial of a petition for declaratory ruling.** The Commission, in its discretion, may deny a petition for declaratory ruling for good cause. In this instance, the Commission, in a letter, will indicate the reason(s) for refusing to issue the declaratory ruling. Good cause includes, but is not limited to, the following:

(1) The petition does not substantially comply with the information required by this section;
(2) The petition involves hypothetical situations or alternative plans;
(3) The petitioner requests the Commission to interpret or apply a statute, or requests a determination as to whether a statute is constitutional under the Oklahoma Constitution or the United States Constitution;
(4) The facts or issue(s) presented in the petition are unclear, overbroad, insufficient or otherwise inappropriate as a basis upon which to issue the declaratory ruling;
(5) The issue about which the declaratory ruling is requested is primarily one of fact;
(6) The issue is presently being considered in a rulemaking proceeding, protest proceeding or other agency or judicial proceeding that may definitively resolve the issue;
(7) The issue cannot be reasonably resolved prior to the issuance of rules;
(8) The petitioner is under investigation or audit relating to that issue, or the issue is the subject of investigation, audit, administrative proceeding or litigation;
(9) The issue relates to the application of the law to members of a business, trade, professional or industrial association or other similar group(s); or
(10) The petitioner is not identified or is anonymous.

(l) **Withdrawal of a petition for declaratory ruling.** The petitioner may withdraw the petition for a declaratory ruling, in writing, prior to the issuance of the declaratory ruling.

(m) **Response when declaratory ruling inappropriate.** When a declaratory ruling petition requests the Commission to interpret or apply a statute or case law to a specific set of facts, the Commission will issue a letter ruling, as described in *OAC* 710:1-3-73, instead of a declaratory ruling.

PART 5. ADMINISTRATIVE PROCEEDINGS RELATED TO TAX PROTESTS

710:1-5-21. Intent, scope and construction of rules

The Rules of Practice and Procedure before the ~~Oklahoma Tax Commission~~Office of the Administrative Law Judges set out in this Part shall govern all contested proceedings before the Oklahoma Tax Commission or its delegated Administrative Law Judge. These Rules shall be given the most reasonable meaning, taken in their total context, and will be construed to secure due process in the proper resolution of every controversy. They shall not be construed to limit legal rights or obligations of any party.

710:1-5-25. Content of protests and applications for hearing

Protests and applications for hearing shall be filed and signed by the taxpayer, or an authorized representative, and shall set out therein:

(1) The name, address and ~~social security number or~~ employer's identification number, if applicable;
(2) A statement of the amount of the deficiency as determined by the Division in the proposed assessment, the nature of the tax and the amount thereof in controversy;
(3) A clear and concise assignment of each error alleged to have been committed;
(4) The argument and legal authority upon which each assignment of error is made; provided, that the applicant shall not be bound or restricted in such hearing, or on appeal, to the arguments and legal authorities contained and cited in said applications;
(5) A statement of the relief sought by the taxpayer;
(6) A verification by the taxpayer or his duly authorized agent that the statements and facts contained therein are true; and
(7) In a refund claim, an assertion as to whether the basis for the claim request is due to a mistake of law or a mistake of fact with a brief statement of the mistake.

710:1-5-42. Appeals ~~to the Supreme Court of Oklahoma~~ from orders of the Oklahoma Tax Commission

(a) If a taxpayer is aggrieved by any order, ruling, or finding ~~the order~~ of the Tax Commission, ~~he~~ the taxpayer may appeal therefrom directly to the Oklahoma Supreme Court. The appeal must be perfected within thirty (30) days of the mailing of the order by filing a petition in error with the clerk of the Supreme Court of the State of Oklahoma and by filing a designation of the record with the Secretary of the Tax Commission at the same time the petition in error is filed.

(b) In lieu of an appeal to the Supreme Court, any taxpayer aggrieved by a final order of the Tax Commission assessing a tax or an additional tax or denial of a claim for refund may opt to file an appeal for a trial de novo in the district court of Oklahoma County or the county in which the taxpayer resides. An appeal for trial de novo in district court must be filed in the district court within thirty (30) days of the mailing of the Tax Commission order. A district court order resulting from such a trial shall be appealable directly to the Supreme Court of Oklahoma by either the taxpayer or the Tax Commission. Such appeal shall be taken in the manner and time provided by law for appeal to the Supreme Court from the district court in civil actions. The provisions of this subsection shall be applicable for tax periods beginning after January 1, 2014. Provided, if the order applies to multiple tax periods which begin before and after January 1, 2014, the appeal provided by this subsection shall be available to the aggrieved taxpayer.

PART 8. SETTLEMENT OF TAX LIABILITY

710:1-5-92. Exclusivity of request for settlement of tax liability

Procedures governing settlement of final tax liabilities, pursuant to this Part, are exclusive and must be clearly distinguished from procedures required for the filing of a timely **protest** of a proposed tax assessment or a protest of a denial of a claim for refund of taxes as set out in 710:1-5-21 through

~~710:1-5-48~~710:1-5-49. The procedures for the filing, consideration, and disposition of **petitions for abatement or adjustment of a tax assessment** pursuant to the provisions of 68 O.S. § 221(e) are set out in 710:1-5-70 through 710:1-5-78. Procedures for settlement of disputed, unliquidated tax claims or assessments are set out in 710:1-5-13.

PART 10. BUSINESS COMPLIANCE PROCEEDINGS

710:1-5-117. Hearing request by noncompliant taxpayer

(a) **Contents and form of protest and request for hearing.** The protest and request for hearing must be made in writing, signed by the taxpayer or an authorized representative, and should outline therein:

(1) Taxpayer's name, address and ~~social security number or~~ employer's identification number, if applicable;

(2) Taxpayer's sales tax permit or other identification number issued by the Tax Commission;

(3) The sales tax reporting periods at issue; and

(4) That an administrative hearing is requested including the manner in which the taxpayer desires the hearing to be held whether in person, by telephone, upon written documents furnished by the noncompliant taxpayer, or upon written documents and evidence produced by the noncompliant taxpayer at hearing.

(b) **Rule applicability.** The tax protest procedure outlined in 710:1-5-21 through ~~710:1-5-48~~710:1-5-49 is not applicable to the business closure protest proceedings which are solely governed by the provisions of 710:1-5-117 through 710:1-5-121.

PART 11. DISQUALIFICATION OF PERSONS REPRESENTING TAXPAYERS BEFORE THE OKLAHOMA TAX COMMISSION

710:1-5-200. Disqualification procedure

(a) **General provisions.** Any person shown to be in violation of the provisions of Section 236 of Title 68 of the Oklahoma Statutes, may, after notice and an opportunity for hearing, be disqualified from practice before the Oklahoma Tax Commission.

(b) **Complaint and initial investigation.** The Commission may, upon its own initiative, or upon receiving a written complaint filed with the Secretary-Member, cause the complaint to be investigated and a determination made as to whether good cause exists for initiating a disqualification proceeding. If it is determined that no violation has occurred, or if there is insufficient evidence to support the allegation, the investigation will be terminated. If a determination is made that good cause exists for initiating a disqualification proceeding, such proceeding will be promptly commenced.

(c) **Commencement of proceeding.** Upon the initiation of a disqualification proceeding, the matter shall be set for hearing before a hearing examiner or an Administrative Law Judge assigned by the Commission. The respondent who is the subject of the proceeding, and the Office of the General Counsel who shall prosecute the matter, shall be provided notice of the hearing, at least thirty (30) days prior to the hearing date.

(d) **Notice.** Notice to respondent shall be made by certified mail, return receipt requested, postage prepaid, to the last known address, and shall contain a summary of the complaint, the name of the Administrative Law Judge or hearing examiner assigned to the matter, and the time and date of the hearing.

(e) **Conduct of hearing.** The hearing shall be public except where prohibited by confidentiality imposed by law, and shall be conducted in conformity with ~~Commission~~the Rules ~~on~~of Practice and Procedure before the Office of the Administrative Law Judges (OAC 710:1-5-20 through ~~710:1-5-48~~ 710:1-5-49).

(f) **Burden of proof.** The Office of the General Counsel shall have the burden of establishing, by a preponderance of the evidence, that a violation of Section 236 has occurred such that respondent should be disqualified from practice before the Commission. Notice of the final disposition of the disqualification proceedings will be provided respondent.

(g) **Scope of action.** The respondent may be found qualified to practice and the proceeding dismissed on the merits; or the respondent may be disqualified from practice before the Commission for a stated period of time, or indefinitely. The Commission may provide notice of the determination of the disqualification proceeding to other agencies, boards, or Commissions who exercise jurisdiction or regulatory authority over the respondent or the activities involved in the violation. Nothing in this Section shall preclude the Commission from seeking any other remedies or legal proceedings available at law to enforce its orders, rules, or the provisions of 68 O.S. § 236.

[OAR Docket #15-420; filed 6-10-15]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 10. AD VALOREM

[OAR Docket #15-421]

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RULES:
Subchapter 1. General Provisions
710:10-1-3 [AMENDED]
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Subchapter 3. Equalization Study
Part 1. General Provisions
710:10-3-18 [AMENDED]
Subchapter 7. Manufacturing Facilities
710:10-7-15 [AMENDED]
Subchapter 12. Agricultural Land Conservation Adjustment
710:10-12-11 [AMENDED]
Subchapter 13. Valuation Exclusion for Desulphurization Equipment
710:10-13-12 [AMENDED]
Subchapter 14. Disabled Veterans in Receipt of Compensation at the One Hundred Percent Rate
710:10-14-1 [AMENDED]
710:10-14-5 [AMENDED]
710:10-14-6 [AMENDED]

710:10-14-8 [AMENDED]
Subchapter 16. Unremarried Surviving Spouses of Persons Who Died in the Line of Military Duty [NEW]
710:10-16-1 [NEW]
710:10-16-2 [NEW]
710:10-16-3 [NEW]
710:10-16-4 [NEW]

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ANALYSIS:

Subchapter 1, "*General Provisions*" has been amended consistent with the passage of House Bill 3188 [2014] which amends the definition of improvement for purposes of valuing property damaged by a natural disaster or other event which is subsequently rebuilt or restored. **Subchapter 1** has also been amended along with **Subchapter 3**, "*Equalization Study*" to provide for the amendment to Article 10, Section 8B of the Oklahoma Constitution which modified the maximum allowable increase in any taxable year for locally assessed homestead and agricultural property from 5% to 3%. [State Question 758, adopted at election held November 6, 2012].

Proposed amendments to **Subchapter 14**, *"Disabled Veterans in Receipt of Compensation at the One Hundred Percent Rate"* have been made to implement the provisions of State Question 770, adopted by voter approval, effective November 4, 2014, which amends Section 8E of Article 10 of the Oklahoma Constitution to allow for the transfer of the property tax exemption afforded 100% disabled veterans or their surviving spouses under the specific circumstances outlined in the approved measure.

New **Subchapter 16**, *"Unremarried Surviving Spouses of Persons Who Died in the Line of Military Duty"*, has been adopted to outline eligibility requirements and qualification procedures for the property tax exemption allowed unremarried surviving spouses of persons who died in the line of military duty in accordance with the adoption by voter approval of State Question 771.

Sections **710:10-7-15, 710:10-12-11** and **710:10-13-12** have been amended, changing *Rules of Practice and Procedure before the Oklahoma Tax Commission* to *Rules of Practice and Procedure before the Office of the Administrative Law Judges* and also updating the internal cross-references.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 1. GENERAL PROVISIONS

710:10-1-3. Procedures for implementation of the ad valorem valuation limitation

(a) **Application of limitation for counties in compliance ~~January 1, 1997~~January 1, 2013 and subsequently.** Pursuant to Article X, Section 8B of the Oklahoma Constitution and Title 68 O.S.~~Supp.1997,~~ §2817.1, ~~effective May 29, 1997~~ on and after January 1, 2013, ~~increasing the constitutionally limited value of locally assessed real property more than five percent in any taxable year is prohibited~~the fair cash value of any parcel of locally assessed real property which constitutes homestead property or agricultural land shall not increase by more than 3% in any taxable year. The fair cash value of all other locally assessed real property shall not increase by more than 5%. The limitation on valuation increases set forth in this subsection do not apply in any year ~~unless~~when the title of the property is transferred, changed, or conveyed to another person, or if improvements are made to the property unless subject to provisions of subsection (j) of this Section. [**See:** 68 O.S.~~Supp.1997,~~ § 2802.1] The limitation shall apply ~~January 1, 1997~~ January 1, 2013, to all counties in compliance with applicable laws and administrative regulations governing valuation of locally assessed real property. For those counties out of compliance as of ~~January, 1997~~January 1, 2013, the limitation shall apply January 1 of the year following the date on which the county was deemed to be in compliance. Once a county is in compliance on or after ~~January 1, 1997~~January 1, 2013 the limitation shall not be removed, even if a county is deemed to be out of compliance. ~~[State Board of Equalization meeting of June 15, 1998]~~

(b) **Implementation of limitation.** The county assessor will implement the limitation by annually comparing the fair cash value with the constitutionally-limited value. County assessors should continue to determine fair cash value on an annual basis. The limitation does not accumulate ~~nor should it be interpreted as 20 percent, once every four years~~. In the event that a final fair cash value of a property changes as the result of a protest with the county assessor, County Board of Equalization, applicable court action, or action by the County Board of Tax Roll Corrections, the ~~fivepercent~~applicable valuation limitation shall apply to that property's final taxable value, as determined using accepted appraisal methodology for subsequent years.

(c) **Rights of taxpayers.** Taxpayers shall continue to have all rights of protest with respect to the valuation and assessment of property as currently specified by statute. If the taxpayer demonstrates to the satisfaction of the county assessor or county board of equalization that the fair cash value is below the constitutionally-limited value, it is appropriate for the county assessor to lower the property to that value. The limitation would then be applied annually to that value if all other conditions of the limitation on increases of fair cash value in Article 10, Section 8B, Oklahoma Constitution, are met.

(d) **Review of valuation for error.** The county assessor should review the valuation of the property for clerical errors, incorrect physical characteristics, or other material error affecting valuation in order to protect the taxpayer. This review should **not** include a revaluation of the property because it is below fair cash value.

(e) **Duration of limitation.** The annual ~~fiveper-cent~~valuation limitation is valid on the property as long as title to the property is not transferred, changed, or conveyed. [**See:** 68 O.S. § 2802.1]

(f) **Physical improvements on limited property.** In the event that physical improvements are made to the limited property, the improvement shall be valued in the same manner as the improvements are presently valued. Examples of physical improvements may include, but are not limited to, a room addition, additional square footage, a garage, out buildings, enclosed garage, or similar improvements. This additional valuation shall be added to the limited value of the property before the construction occurred. For example, if the improvements added $5,000 in fair cash value to the property, it would be increased by that amount. The ~~limited~~ property may increase up to ~~fivepercent~~the applicable valuation limitation in addition to the increased amount added by the improvement. The new total value continues to be limited as long as the title of the property remains the same. Physical additions or changes that are considered normal maintenance such as certain normal repairs, minor re-modeling, roof repair or installation, minor energy efficiency improvements, or retro fit improvements such as wheelchair ramps providing access to the property are not generally considered physical improvements affecting the limited value. [**See:** 68 O.S.~~Supp.1997,~~ §§ 2802.1, 2817.1]

(g) **Effect of conveyance of property.** If title to the property is transferred or conveyed, the parcel of real property shall be assessed at fair cash value as set forth by Section 8 of Article X of the Oklahoma Constitution. This valuation is to be based upon current market value standards rather than simply placing the property on at its sale price, and it is the responsibility of the county assessor to value the property at fair cash value consistent with applicable statutes and ad valorem rules. Any sale occurring during the course of a given calendar year shall be valued at fair cash value as specified by statute for the following tax year. The county assessor shall continue to be responsible for making valuation changes to surrounding properties based on current sales information of comparable property within the constitutional limitations specified for non-sold properties. [**See:** 68 O.S.~~Supp.1997,~~ § 2802.1~~; *Bliss Hotel v. Thompson*, 378 P.2d 319 (Okla. 1962); Ad Valorem Bulletin 97-87~~]

(h) **Omitted property.** While accomplishing statutorily mandated duties, the county assessor or a deputy will discover unassessed improvements on real property. A house and outbuildings, for example, could be on the assessment rolls, but a detached garage, second dwelling, or barn, previously unassessed, could be discovered. This additional property must be treated as if it were new construction and the county assessor should proceed to establish the fair cash value of the discovered property. It should be added to the assessment rolls, and proper notice provided. The original property will still be subject to the ~~five-percent~~applicable valuation limitation, but the additional structure will **not** be subject to the valuation limitation, **for that year only.** This additional property was not on the assessment rolls before, and is to be placed on the assessment rolls at fair cash value. ~~[**See:** Ad Valorem Bulletin 97-04]~~

(i) **Clerical errors.** When a property has been incorrectly entered on the assessment rolls as a result of clerical or data entry error, any error should be corrected. Clerical errors, however, are **not** to be used for general revaluation of the property, except that when the error results in a substantial impact on the value of the property, it should be corrected when discovered and proper notice provided to the taxpayer. For example, a residence that has been incorrectly entered as 1,000 square feet, instead of 2,000 feet, **because of a clerical error** should be corrected. The clerical error must be a mistake of fact, and the change must reflect the actual physical characteristics of the property itself. Clerical errors of this nature are not subject to the ~~five percent~~applicable valuation~~increase~~ limitation.

(j) **Adjustment of damaged properties.** In valuing property damaged by natural causes, flood, storms, fires, or other disasters, the county assessor shall adjust the value of such properties. When the damage has been repaired, or the property fully restored to its previous usage, ~~the property should be assessed at fair cash value~~the improvements made must be disregarded for purposes of determining the maximum amount of fair cash value subject to ad valorem taxation pursuant to Section 8B of Article 10 of the Oklahoma Constitution unless the improvements increase the square footage. The ~~five percent (5%)~~valuation limitation outlined in subsection (a) of this Section applies to the restoration of the damaged property to the extent the square footage is the same as the original property. However, the limitation does **not** apply to any improvements ~~or additions~~constituting increases in square footage to the original property. [**See:** 68 O.S. §§ 2802.1, and 2817.1~~; Ad Valorem Bulletin 97-04~~]

710:10-1-4. Limitation of the fair cash value on homestead property of qualified owners; implementation of Article 10, Section 8C of the Oklahoma Constitution

The procedures and requirements set out in this Section shall be used to implement the limitation of the valuation on homestead property of qualified owners for ad valorem purposes:

(1) **General provisions. "Senior valuation limitation"** means the implementation of Oklahoma Constitution, Article 10, Section 8C, which directed county assessors to limit the fair cash value of the homestead property of any qualified person who has made proper application. The applicant's property must be a valid homestead property, with proper evidence of a homestead or an application made in 1997 or subsequent years. As with any homestead, the general statutes for homestead qualification apply to the limitation. Only one homestead, and by extension, only one limitation is permitted in any one year. The limitation applies only to the occupied homestead property and may not be applied to non-homestead property. [**See:** 68 O.S.2001, §§ 2888, 2889, 2890, 2893]

(2) **Relationship to exemptions and other programs.** The senior valuation limitation is available to qualified owners in addition to participation in the circuit breaker and additional homestead exemption. [**See:** 68 O.S.

§ 2802, for definitions of **"circuit breaker"** and **"additional homestead exemption".**] Availability of the senior valuation limitation **is not** dependent upon the county's compliance status with the State Board of Equalization.

(3) **Qualified owner.** The taxpayer must be 65 the year before the senior valuation limitation is approved, and the applicant's total household annual income for the previous year must not exceed the amount as provided in the Oklahoma Constitution, Article 10, Section 8C. The income threshold for the gross household income from all sources for an individual head of household under this Section shall not exceed the amount determined by the United States Department of Housing and Urban Development to be the estimated median income for the preceding year for the county or metropolitan statistical area which includes such county. The Tax Commission shall provide this information to each county assessor each year, as soon as it is available.

(4) **Application; qualification; duties of assessor; right of appeal.** In order to be eligible for the senior valuation limitation, the individual must apply at the county assessor's office by completing **OTC Form 994 (Revised-04)**, **Application for Property Valuation Limitation and Additional Homestead Exemption.** The application must be made between January 1 and March 15. However, the time within which to apply for **additional homestead exemption** may be extended thirty (30) days, if a Notice of Change in Assessed Value (OTC Form 926-R-87) is sent, as stipulated in 68 O.S. § 2890(C). The limitation will be in affect for the tax year in which the application is made and approved, based on the current year valuation.

(A) For the limitation to be valid, **OTC Form 994 (Revised-04), Application for Property Valuation Limitation and Additional Homestead Exemption**, must be completed in its entirety as to income, age, ownership, and other information.

(B) The county assessor has the right and duty to review the information provided, ask any necessary questions, request documentation of age, income, or other information.

(C) The county assessor shall deny any application that is inaccurate, incomplete, inadequately documented, or otherwise invalid pursuant to this Section.

(D) The county assessor may request assistance from the Oklahoma Tax Commission in determination of income qualifications under 68 O.S.2001, § 2890.

(E) The taxpayer may appeal any denial of a senior valuation limitation application by the county assessor to the county board of equalization in the same manner as an appeal of the denial of a homestead exemption.

(5) **Review of valuation for error.** The county assessor should review the valuation of the property for clerical errors, incorrect physical characteristics, or other material error affecting valuation in order to protect the taxpayer. This review shall **not** include a revaluation of the property solely because it may be below fair cash value.

(6) **Physical improvements to property.** If a physical improvement is made to the property, such as a room addition, additional square footage, garage, out buildings, enclosed garage, or similar improvement, the improvement shall be valued in the same manner as these improvements are presently valued. This additional valuation shall be added to the limited value of the property before the construction occurred. If improvements are added to the property, the fair cash value shall be increased by the amount attributable to the addition. The new total value is then limited again, so long as the owner and property remain qualified. Physical additions or changes that are considered normal maintenance, such as normal repairs, minor re-modeling, roof repair or insulation, minor energy efficiency improvements, or retro fit improvements such as wheelchair ramps to provide access to the property, are not generally considered physical improvements affecting the valuation limitation.

(7) **Duration of, and conditions which terminate the limitation.** The senior valuation limitation is valid on the property as long as the taxpayer owns and occupies the property and title to the property is not transferred, changed, or otherwise modified. If the taxpayer fails to own and occupy the property or if title to the property is transferred, changed, or conveyed to another person, the senior valuation limitation shall expire. It is then the responsibility of the county assessor to value the property at fair cash value consistent with constitutional provisions, statutes and applicable rules. If the person's gross household income from all sources exceeds the amount provided in the Oklahoma Constitution, Article 10, Section 8C, the senior valuation limitation shall expire and the value of the property shall be subject to the ~~five~~three percent limitation increase for that year.

(8) **Instances in which tax amount may increase, despite limitation.** The senior valuation limitation applies to the valuation, but it does not limit all taxes. The tax amount could increase under three specific situations:

(A) If an additional millage such as a bond issue or other levy is added;

(B) If judgment is rendered against the county and a judicial order directs an additional levy; or,

(C) If the county voters adopt a measure increasing the assessment percentage within the county under the authority of Section 8, Article 10, of the Oklahoma Constitution.

SUBCHAPTER 3. EQUALIZATION STUDY

PART 1. GENERAL PROVISIONS

710:10-3-18. Equalization study finding; submission to State Board of Equalization

(a) **Compliance with equalization study requirements.** Upon completion of the equalization study, the Oklahoma Tax Commission Ad Valorem Division shall report median audited assessment percentages for each property classification. Counties found to be within the Constitutional assessment percentage range of 11 to 13.5 percent, with all three classes of real property within the deviation range of 1.5 percent from the highest to the lowest ratio, shall be certified to the State Board, as being in compliance with equalization audit requirements.

(1) **Class deviations.** All counties must have all three classes of real property within the deviation range of 1.5 percent range, from the highest to the lowest ratio, in order to be in compliance, regardless of overall median ratio. [**See:** Art. 10, Section 8A2, Okla. Const.]

(2) **Annual valuation.** The county must annually value all taxable real and personal property within the county, as required by 68 O.S. §§ 2817; 2829; and 2830, regardless of overall median ratio.

(3) **Constitutional compliance.** The county must be in compliance with Article 10, Section 8, of the Oklahoma Constitution, concerning assessment percentage limitation for real and personal property; with Section 8B, concerning the ~~five percent (5%)~~applicable valuation limitation on increases ~~limit on increase~~ in fair cash value; and Section 8C, concerning limitations on fair cash value on certain homestead property, regardless of the overall median ratio.

(b) **Categories of non-compliance.** As specified in 68 O.S. §2830, the findings of the equalization study shall constitute the monitoring responsibilities specified in that statute. For purposes of that statute, the following three categories specified are defined:

(1) **Category One non-compliance.** If a county is found out of compliance on its annual equalization study in December, the county would be classed in Category One non-compliance. The county would have until the following June 15 meeting of the State Board of Equalization to correct the deficiencies noted in the equalization study. [**See:** 68 O.S. § 2830]

(2) **Category Two non-compliance.** If the county did not correct the problems noted in the equalization study by the June 15 date, this will be noted in the Oklahoma Tax Commission's report to the State Board of Equalization with a recommendation to re-classify the county to Category Two non-compliance. At the next State Board of Equalization meeting in December, if all compliance criteria have been achieved, the State Board of Equalization would determine the county in compliance. If the county was found not in compliance at the December meeting, the county would then have until the following June 15 meeting to achieve compliance. If compliance was not achieved, the State Board of Equalization would have the option not to certify the county abstract until all compliance criteria had been achieved and to reclassify the county Category Three non-compliance.

(3) **Category Three non-compliance.** If a county which has been previously classified Category Two and has failed to meet compliance criteria set forth by the State Board, the county would be classified Category Three non-compliance. The State Board of Equalization may elect not to certify the abstract.

(c) **Right of appeal.** Under 68 O.S. § 2882, a district attorney, acting under the direction of the board of county commissioners, can appeal a decision of the State Board of Equalization. Pursuant to 68 O.S.§ 2883, a county assessor may appeal the decision of the Oklahoma Tax Commission of Category Two or Three non-compliance.

SUBCHAPTER 7. MANUFACTURING FACILITIES

710:10-7-15. Review; protest; appeal

(a) **Notice of erroneous exemption; assessment.** If the Tax Commission determines that an ad valorem manufacturing exemption has been erroneously or unlawfully granted to a manufacturing concern, in whole or in part, shall notify the appropriate county assessor, who shall, after notice to the applicant as required by law has been given, immediately value and assess the property and place the property on the tax rolls for Ad Valorem taxation. [**See:** Attorney General Opinion 03-16]

(b) **Notice to applicant.** The Tax Commission shall mail a copy of the notice pursuant to the terms of 68 O.S. § 208 to the applicant at the mailing address shown on the application. The copy shall notify the applicant of his right to protest the Commission's determination.

(c) **Protest.** Within sixty (60) calendar days after the mailing of the notice, the applicant may file with the Oklahoma Tax Commission, a written protest, under oath, signed by himself or his duly authorized representative, in the manner and subject to the requirements set out in 68 O.S. § 207 of the Uniform Tax Procedure Code. A copy of the protest shall be mailed or delivered by the applicant to the county assessor.

(d) **Law governing protest procedure.** The Applicant's right of protest, hearing and procedure to be followed shall be governed by the provision of the Uniform Tax Procedure Code. [**See:** 68 O.S. §§ 201, et seq. and the Rules of Practice and Procedure before the ~~Commission~~Office of Administrative Law Judges, promulgated at 710:1-5-20 through ~~710:1-5-48~~710:1-5-49 of the **Oklahoma Administrative Code.**]

(e) **Appeal.** Appeals from the decision of the Oklahoma Tax Commission regarding any protest shall be made directly to the Supreme Court of Oklahoma, as provided by law.

SUBCHAPTER 12. AGRICULTURAL LAND CONSERVATION ADJUSTMENT

710:10-12-11. Review; protest; appeal

(a) **Notice of erroneous adjustment or; assessment.** If the Tax Commission determines that a Conservation Land Adjustment has been erroneously or unlawfully granted, in whole or in part, it shall notify the appropriate county assessor, who shall immediately value and assess the property without the Conservation Adjustment.

(b) **Notice to applicant.** The Commission shall mail a copy of the notice pursuant to the terms of 68 O.S. § 208 to the applicant at the mailing address shown on the application. The copy shall notify the applicant of his right to protest the Commission's decision.

(c) **Protest.** Within thirty (30) calendar days after the mailing of the notice, the applicant may file with the Oklahoma Tax Commission, a written protest, under oath, signed by himself or his duly authorized representative, in the manner and subject to the requirements set out in 68 O.S. § 207 of the Uniform Tax Procedure Code. A copy of the protest shall be mailed or delivered by the applicant to the county assessor.

(d) **Law governing protest procedure.** The Applicant's right of protest, hearing and procedure to be followed shall be governed by the provisions of the Uniform Tax Procedure Code. [**See:** 68 O.S. § 201, et seq. and the Rules of Practice and Procedure before the ~~Commission~~ Office of Administrative Law Judges, promulgated at 710:1-5-20 through ~~710:1-5-48~~710:1-5-49 of the *Oklahoma Administrative Code.*]

(e) **Appeal.** Appeals from the decision of the Oklahoma Tax Commission regarding any protest shall be made directly to the Supreme Court of Oklahoma, as provided by law. [**See:** 68 O.S. § 225]

SUBCHAPTER 13. VALUATION EXCLUSION FOR DESULPHURIZATION EQUIPMENT

710:10-13-12. Erroneous adjustment or assessment; review; protest; appeal

(a) **Determination of erroneous or unlawful exclusion.** If the Tax Commission or the County Assessor determines that an valuation exclusion has been erroneously or unlawfully granted, in whole or in part, the Commission shall so notify the appropriate County Assessor, who shall immediately value and assess the property which was previously excluded from value.

(b) **Notice to applicant.** The Tax Commission shall mail a copy of the notice pursuant to the terms of 68 O.S. § 208 to the applicant at the address shown on the application or certification letter from the Department of Environmental Quality. The copy shall notify the applicant of the right to protest the Tax Commission's decision.

(c) **Protest.** Within sixty (60) calendar days after the mailing of the notice, the applicant may file a written protest, under oath, with the Oklahoma Tax Commission, signed by an authorized representative, in the manner and subject to the requirements set out in 68 O.S. § 207 of the Uniform Tax Procedure Code. The applicant shall mail or deliver a copy of the protest to both the County Assessor and the Tax Commission.

(d) **Law governing protest procedure.** The applicant's right of protest, hearing, and procedure to be followed shall be governed by the provisions of the Uniform Tax Procedure Code, 68 O.S. § 201 et seq., and the Rules of Practice and Procedure before the ~~Tax Commission~~Office of Administrative Law Judges, *OAC* 710:1-5-20 through ~~710:1-5-48~~710:1-5-49.

(e) **Appeal.** Appeals from the decision of the Tax Commission regarding any protest shall be made directly to the Supreme Court of Oklahoma, as provided by law. [**See:** 68 O.S. § 225]

SUBCHAPTER 14. DISABLED VETERANS IN RECEIPT OF COMPENSATION AT THE ONE HUNDRED PERCENT RATE

710:10-14-1. General provisions

(a) The procedures and requirements set out in this Subchapter shall be used to implement the exemption of the full fair cash value for homestead property and household personal property of qualified owners for ad valorem purposes.

(b) The "one hundred percent disabled veterans exemption" refers to the implementation of the constitutional amendments added to the Oklahoma Constitution, Article 10, § 8E, by State Question 715, effective January 1, 2006 and Article 10, § 8D, by State Question 735, effective January 1, 2009. The amendments direct county assessors to exempt the total amount of the actual fair cash value of the homestead real property and household personal property of any qualified person who has made proper application. The applicant's real property must be a valid homestead property, with evidence of a homestead exemption, or eligible for homestead exemption. As with any homestead-based exemption, the general statutes governing homestead exemption qualification apply to the one hundred percent disabled veterans exemption. Only one homestead, and by extension, only one exemption, is permitted in any one year, per applicant The exemption applies only to owner-occupied homestead property and may not be applied to any non-homestead property. [**See:** 68 O.S. §§ 2888, 2889, 2890, 2893]

(c) The passage of State Question 770, effective November 4, 2014, adds an amendment to Article 10 Section 8E to allow for the transfer of the exemption set forth therein under the circumstances where a qualifying veteran or surviving spouse of the veteran sells a previously exempted homestead property and acquires, in the same calendar year, a new homestead property. The newly acquired property shall be exempt to the same extent as the homestead property previously owned by such person.

710:10-14-5. Application

(a) In order to be eligible for the one hundred percent disabled veterans exemption, the individual must apply at the county assessor's office by completing an Application for 100% Disabled Veterans Property Tax Exemption, Oklahoma Tax Commission Form 998. The application should be made between January 1 and March 15th in the same manner as for homestead exemptions. However, if the county assessor becomes aware of an otherwise-qualified applicant at any time

during the current tax year, the county assessor may, upon compliance with all qualification criteria, make the appropriate adjustment. Providing all homestead requirements are met, if an otherwise qualified applicant receives their one hundred percent (100%) disability rating effective on or before the date of application, the property is exempt for the entire year regardless of the status of disability on January 1. If an otherwise-qualified applicant is discovered after the tax roll has been certified, then a tax roll correction may be made pursuant to 68 O.S § 2871(C)(2). Any applications that are denied by the county assessor shall be subject to the same protest procedure as provided for homestead exemption. If the disability rating of any veteran participating in the exemption program is reduced by the U.S. Dept. of Veterans Affairs to less than one hundred percent, the veteran shall immediately notify the county assessor of the change in status. Failure to do so will result in loss of any future homestead exemption pursuant to 68 O.S. §§ 2892(K) and 2900.

(b) To transfer the exemption to a newly acquired homestead property the qualified veteran or surviving spouse of the veteran must file **Form 998-B, Application For 100% Disabled Veterans Exemption Acquired Homestead Property** with the county assessor. Beginning with the month the deed instrument is filed of public record and the application is approved the homestead property will be exempt to the same extent as the homestead property previously owned by such person or persons for the year during which the new homestead property is acquired and each year thereafter providing qualifications are maintained.

(c) The exemption application must be filed in the year requested. Filing for previous years is prohibited pursuant to Oklahoma Constitution Article 10 § 22A.

710:10-14-6. Duties of the assessor

(a) The county assessor has the authority to review any information provided by the applicant, ask any necessary questions, request documentation including, but not limited to: Military I.D., Veterans Administration benefits card, current Oklahoma ~~Drivers License~~driver license or any other information that the assessor may feel is relevant for the initial application, transfer, or any time in subsequent years. The county assessor shall deny any application that is inaccurate, incomplete, inadequately documented, or otherwise invalid pursuant to this Subchapter.

(b) Any adjustment after the adjournment of the County Board of Equalization must be approved by the Board of Tax Roll Corrections.

710:10-14-8. Duration; conditions which terminate the exemption

The 100% Disabled Veterans Exemption is valid on the property as long as the taxpayer or surviving spouse owns and occupies the property and remains eligible for homestead exemption. If title to the property is transferred or qualifications are no longer met, the exemption shall ~~expire~~ be terminated and the value of the property shall be subject to valuation the following year pursuant to Oklahoma Constitution, Article 10, § 8~~B~~.

SUBCHAPTER 16. UNREMARRIED SURVIVING SPOUSES OF PERSONS WHO DIED IN THE LINE OF MILITARY DUTY

710:10-16-1. General provisions

(a) The procedures and requirements set out in this Subchapter shall be used to implement the exemption for the full fair cash value of homestead property of qualified unremarried surviving spouses.

(b) The exemption for "unremarried surviving spouses of military personnel who died in the line of duty" refers to the implementation of an amendment added to the Oklahoma Constitution, Article 10 § 8F, by State Question 771, effective for the 2014 calendar year and years thereafter. The amendment directs county assessors to exempt the full amount of the actual fair cash value of the homestead property. The applicant's real property must be a valid homestead property with evidence of a homestead exemption or be eligible for homestead exemption. Only one homestead and by extension only one exemption, is permitted in any one year. The exemption applies only to owner-occupied homestead property and may not be applied to non-homestead property. [**See:** 68 O.S. §§ 2888, 2889, 2890, and 2893]

710:10-16-2. Relationship to other exemptions and programs

Although the general law applies, since the actual fair cash value is exempt from ad valorem tax for qualified applicants, applications for other homestead specific property tax exemptions may be unnecessary.

710:10-16-3. Qualified owner

An applicant must be the unremarried surviving spouse of military personnel who is determined by the United States Department of Defense or any branch of the U.S. military to have died in the line of duty. Each applicant must provide the county assessor in the county where the homestead property is located, an original or certified copy of the Department of Defense Form DD-1300 which shall certify the applicant is the surviving spouse of such military personnel.

710:10-16-4. Application

In order to be eligible for the exemption the individual must apply in the initial year the exemption is requested at the county assessor's office by completing **Form 998-C, Application for Unremarried Surviving Spouse of Veterans Deceased in the Line of Duty Property Tax Exemption.** The application should be made between January 1 and March 15 in the same manner as the homestead exemption. However, if a county assessor becomes aware of an otherwise qualified applicant at any time during the current tax year or the exemption is transferred to another homestead eligible property

the county assessor shall, upon compliance with all identification and qualification criteria, make the appropriate adjustment. Providing all homestead and other requirements are met, if an otherwise qualified applicant is in receipt of the Form DD-1300 certifying they are the surviving spouse of military personnel who died in the line of duty, on or before the date of the application, the homestead property is exempt for the remainder of the current year. If an otherwise qualified applicant is discovered after the tax roll has been certified, a tax roll correction shall be made pursuant to 68 O.S. § 2871(C)(2). Any application denied by the county assessor shall be subject to the same protest procedure as provided for homestead exemption. If the qualified unremarried surviving spouse subsequently remarries, they shall immediately notify the county assessor of the change in marital status. Failure to notify the county assessor may result in the loss of future homestead exemptions pursuant to 68 O.S. §§ 2892(K) and 2900. The application must be filed in the year requested, filing for previous years is prohibited pursuant Oklahoma Constitution Article 10 § 22A.

[OAR Docket #15-421; filed 6-10-15]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 20. ALCOHOL, MIXED BEVERAGES AND LOW-POINT BEER

[OAR Docket #15-422]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
710:20-1-3 [AMENDED]
Subchapter 5. Mixed Beverage
710:20-5-1 [AMENDED]
710:20-5-2 [AMENDED]
AUTHORITY:
Oklahoma Tax Commission; 68 O.S. § 203; 37 O.S. § 586
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
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Approved by Governor's declaration on June 8, 2015
FINAL ADOPTION:
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n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Sections **710:20-1-3, 710:20-5-1 and 710:20-5-2** have been amended consistent with the provisions of Sections 18 through 21 of Senate Bill 1715 [2014] which provide for Oklahoma Tax Commission licensing, bonding and mixed beverage tax reporting and payment requirements of holders of public event licenses issued by the ABLE Commission along with acts prohibited by these licensees.
CONTACT PERSON:
Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 1. GENERAL PROVISIONS

710:20-1-3. Purchase requirements for mixed beverage permit holders

(a) No mixed beverage or beer and wine licensee shall purchase or receive any alcoholic beverage other than from:

(1) A person holding a wholesaler or Class B wholesaler license issued pursuant to the Oklahoma Alcoholic Beverage Control Act; or,

(2) A licensed Oklahoma winemaker, if the licensee's premises ~~is~~are also a restaurant. In this instance, the licensee may purchase wine produced at Oklahoma wineries directly from the winemaker. [**See:** 37 O.S. § 537(E)(1)]

(b) No mixed beverage, beer and wine, caterer, public event, or special event licensee, nor any officer, agent, or employee of such licensee, may possess or allow on the licensed premises, any container of any alcoholic beverage which is not listed on an invoice from the wholesaler or from a licensed Oklahoma winemaker from whom the alcoholic beverage was purchased. [**See:** 37 O.S.~~Supp.2001,~~ § 582(A)]

SUBCHAPTER 5. MIXED BEVERAGES

710:20-5-1. Procedures for payment of gross receipts tax on mixed beverage, caterer, hotel beverage, beer and wine, mixed beverage/caterer combination, public event, and special event license holders; definitions

(a) **General provisions.** Pursuant to the authority and power granted to the Oklahoma Tax Commission, the excise tax imposed upon the total gross receipts of a holder of a mixed beverage, caterer, hotel beverage, beer and wine, mixed beverage/caterer combination, public event, or special event license issued by the ABLE Commission, shall be paid through monthly tax reporting procedures as established by rules of this Commission, and shall be implemented, administered and enforced in accordance with said rules. [**See:** 37 O.S. §576]

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

(1) ***"Alcoholic beverage"*** *means alcohol, spirits, beer, and wine,* as those terms are defined in Section 506(3) of Title 37 of the Oklahoma Statutes *and also includes every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed as a beverage by human beings, but does not include low-point beer,* as that term is defined in 37 O.S. § 163.2.

(2) ***"Mixed beverages"*** *means one or more servings of a beverage composed in whole or part of an alcoholic beverage in a sealed or unsealed container of any legal size for consumption on the premises where served or sold by the holder of a mixed beverage, beer and wine, caterer, or special event license*. [**See:** 37 O.S. § 506(22)]

710:20-5-2. Designation of agent of the Oklahoma Tax Commission

(a) The Director of the Taxpayer Assistance Division is hereby designated as the agent, servant and employee of the Oklahoma Tax Commission for the following purposes:

(1) Issuance of mixed beverage tax permits;

(2) Cancellation of mixed beverage tax permits upon delinquency in reporting or paying the gross receipts tax or sales tax;

(3) Temporary suspension of mixed beverage tax permits upon revocation or suspension of the mixed beverage, caterer, hotel beverage, public event, or special events licenses issued by the ABLE Commission;

(4) Establishing amounts of required bonds; and,

(5) Seizure of containers or cases of alcoholic beverages declared to be contraband.

(b) The Director shall report to the Commission, at least on a quarterly basis, all actions taken pursuant to the delegation in (a) of this Section. [**See:** 37 O.S. §§577-578, 582]

[OAR Docket #15-422; filed 6-10-15]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 40. FRANCHISE TAX

[OAR Docket #15-423]

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PERMANENT final adoption
RULES:
710:40-1-6 [AMENDED]
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Oklahoma Tax Commission; 68 O.S. § 203
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INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Section **710:40-1-6** has been amended, extending the delinquency date from September 1 to September 15, pursuant to the provisions of SB 341 [2014].
CONTACT PERSON:
Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

710:40-1-6. Accounting and reporting; suspension and reinstatement

(a) **Filing.** On or before July 1, 2014, each corporation, regardless of its prior filing status, must file either a franchise tax return or an election to use the corporation's income tax return due date as the due date for payment and filing of the corporation's franchise tax return.

(b) **Franchise tax returns due July 1, 2014.** A corporation filing its franchise tax return on July 1, 2014 shall use the corporation's 2013 income tax year balance sheet in preparing the return, regardless of whether the corporation is a calendar year filer or has an income tax year end other than December 31.

(c) **Franchise tax returns due on income tax year end.** A corporation who elects on July 1, 2014 to use its income tax return due date for payment and filing of the corporation's franchise tax return shall use the corporation's 2013 income tax year balance sheet in preparing the return. The franchise tax return is due the fifteenth (15th) day of the third month following the close of the corporation's 2013 tax year; however, if the due date for the filing of the corporation's 2013 income tax return is prior to July 1, 2014, the due date for the filing of its franchise tax return shall be July 1, 2014.

(d) **Franchise tax returns due in subsequent years.** Franchise tax returns due July 1, 2015 or, pursuant to an election to use the corporation's income tax year end in 2015 shall use the corporation's 2014 income tax year balance sheet in preparing the corporation's franchise tax return.

(e) **Good standing certificates.** A corporation shall be issued a good standing certificate (required for filings with the Secretary of State) during the period following the date on which the corporation's franchise tax return is due until the date the corporation's franchise tax return is delinquent.

(f) **Delinquency date.** The date on which the annual franchise tax return and payment is considered to be delinquent is:

(1) For franchise tax returns due July 1, the return is delinquent if not filed and paid on or before the next September ~~1~~15.

(2) Except as provided in (c) of this Section, corporations who have elected to file franchise tax returns and pay franchise tax on their corporate income tax due date, the return is delinquent if not filed and paid on or before the fifteenth (15th) day of the third month following the close of the corporate income tax year. However, if the corporate income tax return due date has been extended, the franchise tax due date shall also be extended. This extension of the due date for filing the return will not serve to extend the date on which the payment of the tax is due.

(g) **Suspension and reinstatement.** [**See:** 68 O.S. § 1212] The Order issued by the Tax Commission reinstating or reviving the charter or other instrument of organization of a previously suspended organization shall state the effective date of the reinstatement or revival. The effective date shall be the date on or by which, as determined by the Commission, the corporation, association, or organization met all requirements for reinstatement, including:

(1) Payment of tax;

(2) Filing of returns;

(3) Filing of officer lists, and

(4) Meeting other requirements as determined by the Commission under applicable law.

(h) **Parent-subsidiary corporate relationships.** In the case of parent-subsidiary corporate relationships, both the parent corporation and any subsidiary corporations shall use the same accounting method as was employed for the last Oklahoma income tax return.

(i) **Consolidated Oklahoma income tax returns.** When a consolidated Oklahoma income tax return has been filed for the parent/subsidiary corporate group, all subsidiary corporations shall file Oklahoma franchise tax returns based upon the method of accounting used by each subsidiary, provided that any undistributed income which is reported on the subsidiary corporation's Oklahoma franchise tax return may be eliminated from the computation on the parent's Oklahoma franchise tax returns.

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TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 45. GROSS PRODUCTION

[OAR Docket #15-424]

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RULES:
Subchapter 5. Required Returns and Reports
710:45-5-1. [AMENDED]
710:45-5-2. [AMENDED]
710:45-5-4. [AMENDED]
Subchapter 7. Special Reporting Requirements
710:45-7-1. [REVOKED]
Subchapter 9. Exemptions and Exclusions
Part 5. Horizontally Drilled Production Wells
710:45-9-28. [REVOKED]
Part 7. Incremental Production from Enhanced Recovery Projects or Properties
710:45-9-31. [AMENDED]
710:45-9-32.1. [AMENDED]
710:45-9-34. [AMENDED]
710:45-9-35. [AMENDED]
Part 9. Production Enhancement Projects
710:45-9-40. [AMENDED]
710:45-9-41. [AMENDED]
710:45-9-43. [AMENDED]
Part 11. Reestablishment of Production from an Inactive Well
710:45-9-51. [AMENDED]
710:45-9-53. [AMENDED]
Part 13. Deep Wells
710:45-9-60. [AMENDED]
710:45-9-62.1. [AMENDED]
Part 15. New Discovery Wells
710:45-9-70. [AMENDED]
710:45-9-71. [AMENDED]
710:45-9-73. [AMENDED]
Part 17. Economically At-Risk Leases
710:45-9-82. [AMENDED]
710:45-9-84. [AMENDED]
Part 19. Production Using Three Dimensional Seismic Shoots
710:45-9-90. [AMENDED]
710:45-9-92. [AMENDED]
710:45-9-93. [AMENDED]
Subchapter 11. Transporters
710:45-11-2. [AMENDED]
Subchapter 15. Reclaimers and Reclaiming Operations
710:45-15-2. [AMENDED]
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n/a
ANALYSIS:

Proposed amendments to **Subchapter 5**, "*Required Returns and Reports*", have been made to:

• Implement the provisions of Senate Bill 332 [First Regular Session of the 54th Legislature (2013)], which strikes the provision that required reports for a zero gross amount. [**68:1010**]

• Delete obsolete information that is no longer required to be reported to the OTC.

• Implement the provisions of Senate Bill 841 [Second Regular Session of the 44th Legislature (1994)], which strikes the Conservation Excise Tax.

• Reflect current statutes by changing "penalties shall be calculated" to "penalties may be calculated." [**68:1010**]

Proposed amendments to **Subchapter 7**, "*Special Reporting Requirements*", have been made to:

• Update policies to reflect current OTC procedures, which include no longer requiring non-operating interest owners to register with the OTC.

Proposed amendments to **Subchapter 9**, "*Exemptions and Exclusions*", have been made to:

• Implement the provisions of House Bill 2562 [Second Regular Session of the 54th Legislature (2014)], which extends the sunset date for the deep well, new discovery, and 3-D seismic incentives from July 1, 2014 to July 1, 2015; extends the sunset date for the enhanced recovery, inactive well, and production enhancement incentives from July 1, 2014 to July 1, 2020; provides that no claims for rebates for production occurring before 2003 are permitted after July 1, 2014; extends the sunset date for the economically-at-risk incentive from calendar year 2013 to calendar year 2020; provides that no claims regarding the economically-at-risk incentive shall be permitted after December 31, 2015 for production periods occurring between calendar years 2005 through 2013; provides that no claims for the economically-at-risk incentive shall be claimed more than eighteen months after the date that the refund is first available for production periods occurring between 2014 and 2020. [**68:1001, 1001.3a**]

Proposed amendments to **Subchapter 11**, "*Transporters*" and **Subchapter 15**, "*Reclaimers and Reclaiming Operations*", have been made to:

• Clarify policy to reflect current OTC procedures, which include no longer accepting a cash deposit or bond for a reclaimer's license or transporter's license.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 5. REQUIRED RETURNS AND REPORTS

710:45-5-1. Minimum requirements of monthly production report

All producers or purchasers of asphalt or ores bearing lead, zinc, jack, ~~gold, silver~~ or copper or petroleum oil, mineral oil, other crude oil, condensate, reclaimed oil, gas, natural gas, casinghead gas, or liquid hydrocarbons from oil or gas produced in this state shall report volume and value of such production monthly on OTC Form 300, or any other form as may be prescribed and required by the Oklahoma Tax Commission. A separate monthly report shall be filed for each county wherein production is reported. Each monthly report shall include the following information:

(1) Commission assigned purchaser reporting number;

(2) Commission assigned producer reporting number;

(3) Commission assigned production unit number, subnumber, and merge number for each lease from which production is reported;

(4) Assigned product code number for the product reported;

(5) Gross amount of the product reported from each lease from which production is reported;

(6) ~~Zero gross amount shall be reported for each product code listed on OTC Form 320 or any amended Form 320, if no sale or purchase of such product occurs during a report period from a lease which has an assigned production unit number, subnumber and merge number;~~

~~(7)~~ Total value of the product reported from each lease from which production is reported; and, the Gross Production Tax and the Petroleum Excise Tax for said lease;

~~(8) If zero gross amount is reported as set out in subparagraph six (6) above, zero total value shall be reported for each product code from each lease;~~

~~(9) Social security number~~

(7) Taxpayer identification number or, if applicable, the federal employer identification number (FEI).

~~(10) Oklahoma Tax Commission disposition code of product reported;~~

~~(11) All producers or purchasers of gas shall also include the following information in each monthly report:~~

~~(A) BTU content per MCF of product reported;~~

~~(B) Price category as certified under the National Gas Policy Act, if applicable, or Oklahoma Tax Commission Code 1 if price of product reported is determined by a contract;~~

~~(C) Oklahoma Tax Commission gas code for destination of product reported; and~~

~~(12) All producers or purchasers of oil shall also include the following information in each monthly report:~~

~~(A) Gravity of product reported;~~

~~(B) Oil classification of product reported. [**See:** 68 O.S. §1010]~~

~~(13) Check number or tracer number associated with the Gross Production Tax monthly report.~~

710:45-5-2. Incomplete monthly production report forms filed shall constitute no report

(a) Any Monthly Production Report form filed with the Oklahoma Tax Commission shall include the minimum information specified in 68 O.S. §1010 and in 710:45-5-1. Any such required monthly report form that does not include these minimum requirements shall not constitute the mandatory report required by statute.

(b) Any Gross Production~~,~~ or Petroleum Excise ~~or Conservation Excise~~ Taxes remitted with an incomplete report form shall be accepted as payment of taxes due, and upon receipt of a proper report, the tax payment shall be apportioned.

(c) Upon receipt of a Monthly Production Report form, which has been approved by the Commission, from a person required to report monthly, which does not include the required information, the Director of the Compliance Division of the Oklahoma Tax Commission, or a designee, shall notify the reporting taxpayer that:

(1) The monthly report form filed with the Commission does not contain the minimum information required by 68 O.S. §1010 and 710:45-5-1 and such form does not constitute a valid Monthly Production Report;

(2) Pursuant to this Section, the person has failed to file a Monthly Production Report;

(3) The amount of penalties accrued; and,

(4) Any remittance or payment made therewith has been accepted and will be apportioned by the Commission in accordance with the applicable statute. [**See:** 68 O.S. §1010]

710:45-5-4. Penalty for delinquent reports

If any monthly production report is not submitted to the Oklahoma Tax Commission in accordance with Section 710:45-5-3; or if any amended report or answer to written demand for information is not timely submitted to the Commission, penalties ~~shall~~may be calculated, declared and collected.

SUBCHAPTER 7. SPECIAL REPORTING REQUIREMENTS

710:45-7-1. Reporting requirements of nonoperating interest owners [REVOKED]

~~Whenever a nonoperating interest owner in a lease has entered into an agreement for the sale of casinghead or natural gas, the nonoperating interest owner must file a properly completed OTC Form 320C, which includes among other required information, the operator's name and reporting number, as well as the name of the nonoperating interest owner. [**See:** 68 O.S. §1009(e)]~~

SUBCHAPTER 9. EXEMPTIONS AND EXCLUSIONS

PART 5. HORIZONTALLY DRILLED PRODUCTION WELLS

710:45-9-28. Rebates - Refund procedure [REVOKED]

~~(a) **Request to Oklahoma Tax Commission for a tax refund.** Upon being certified as a qualifying horizontal well producing prior to July 1, 2011, the well operator or one of the working interest owners in the well, on behalf of the well operator and the other owners of the well, shall make its request for refund by letter to the Compliance Division, Oklahoma Tax Commission. Such letter request shall state the reason for refund and the amount claimed and must be accompanied by the following:~~

~~(1) A copy of the application approved by the Corporation Commission certifying the well as a horizontally drilled well;~~

~~(2) A copy of an approved OTC Form 320A that shows the date of initial production;~~

~~(3) For production periods prior to July 1, 2009, a properly completed OTC Form 328 Gross Production 841/495 Refund Report;~~

~~(4) For the production periods of July 1, 2010 through June 30, 2011, an electronically filed OTC Form 328-DR Gross Production Deferred Rebate Report; and~~

~~(5) If the refund request is filed by any person other than the party named in the application, a notarized affidavit, signed by the party named in the application must be filed, authorizing the applicant to apply for the refund.~~

~~(b) **No time limitation on rebate for prior periods.** Approval of a "Horizontal Drilling Incentive" for production periods prior to July 1, 2003, shall not be time-barred by either the date of certification or the date of filing a claim for refund of the rebate of gross production tax.~~

~~(c) **Documentation of required investment.** For production periods beginning on or after July 1, 2003, and prior to July 1, 2011, no refund shall be paid unless the person authorized to make the claim for refund on behalf of the aggregate owners and operator provides a written statement demonstrating that an amount has been invested which is equal to, or greater than the amount of the refund. The required investment in the exploration for, or production of, oil or natural gas in this state may be made by any individual or combination of aggregate owners and operators, but may not be based upon amounts invested prior to three years from the date of the claim. Any investment used to qualify for a rebate/refund pursuant to this Section shall not be used to qualify for any other refund/rebate.~~

~~(d) **Refund limited to interest owners of record and operators at time of qualifying act.** For production periods prior to July 1, 2011, only the operator and interest owners of record at the time of the qualifying act are eligible for the rebate of gross production tax attributable to their interest in the project.~~

~~(1) In the case of a change in the operator of a qualified project, it is permissible for the new operator to file the claim for refund on behalf of all participating interest owners for the prior and the current periods, although the new operator would not be eligible for any share in the refund.~~

~~(2) A former operator or interest owner may also file the claim for the periods in which the owner or operator actively participated in the project and distribute the appropriate refund amounts to the eligible interest owners.~~

~~(e) **Notice of changes in operator and interest owners.** Effective July 1, 2004, and prior to July 1, 2011, the person filing a claim for refund pursuant to this Section shall provide written notice of any changes in the operator or interest owners that have occurred in the project. Refunds shall be based solely upon the interest owners and operators in place at the time of the qualifying act.~~

~~(f) **Claim limitation.** For production periods beginning on or after July 1, 2003, and prior to July 1, 2009, no claim for rebate pursuant to 68 O.S. § 1001(L) shall be filed more than eighteen (18) months after the first day of the fiscal year in which the refund is initially available. Electronic claims for refund applicable to the production periods beginning July 1, 2009, and prior to July 1, 2011, shall be filed with the Oklahoma Tax Commission no later than December 31, 2011.~~

~~(g) **Method of appeal.** If the refund is denied the applicant may file an appeal under the provisions of Title 68, Sections 227 and 228 of the Oklahoma Statutes.~~

PART 7. INCREMENTAL PRODUCTION FROM ENHANCED RECOVERY PROJECTS OR PROPERTIES

710:45-9-31. Definitions

In addition to terms defined in 710:45-1-2, the following words and terms, when used in this Part, shall have the following meaning, unless the context clearly indicates otherwise:

"Base Production amount" means the average monthly amount of production for the twelve (12) month period immediately prior to the project beginning date minus the monthly rate of production decline for the project or property for each month beginning one hundred eighty (180) days prior to the project beginning date.

"Completion date" means the date a well is first capable of being used for the injection of liquids, gases or other matter, or is capable of producing crude oil or other liquid hydrocarbons through permanent wellhead equipment.

"Enhanced recovery project costs" means the incremental project costs that are allowed as payback factors in determining the exemptions from the levy of gross production tax of project incremental production.

"Existing tertiary enhanced recovery project" means, for purposes of the exemption described in 68 O.S. § 1001(D)(1), a tertiary enhanced recovery project whose beginning date is prior to October 16, 1987.

"Incremental production" means the amount of crude oil or other liquid hydrocarbons which are produced during an approved enhanced oil recovery operation and which are in excess of the base production amount of crude oil or other liquid hydrocarbons.

"Incremental working interest revenue" means the gross value of the incremental production, less the royalty interest therein.

"Monthly rate of production decline" means a rate equal to the average extrapolated monthly decline rate for the twelve (12) month period immediately prior to the project beginning date as determined by the Commission, based on the production history of the field, its current status, and sound reservoir engineering principles.

"New enhanced recovery project" means, for purposes of the exemption described in 68 O.S. § 1001(D)(1), a secondary or tertiary enhanced recovery project whose beginning date is on or after October 16, 1987.

"Project beginning date" means the date on which the injection of liquids, gas, or other matter begins on an enhanced recovery operation.

"Project payback or payout" means that point at which the incremental working interest revenue from the enhanced recovery project equals the enhanced project costs.

"Secondary recovery projects" means secondary recovery projects approved or having an initial project beginning date on or after July 1, 2000 and before July 1, ~~2014~~2020, such that any incremental production attributable to the working interest which results from such secondary recovery property shall be exempt from the gross production tax levied pursuant to 68 O.S. Section 1001 for a period not to exceed five (5) years from the initial project beginning date or for a period ending upon the termination of the secondary recovery process, whichever occurs first.

710:45-9-32.1. Recovery of costs allowed as payback factors

(a) **Enhanced recovery projects with beginning date between October 17, 1987, and June 30, 1990.** For enhanced recovery projects whose beginning dates are October 17, 1987, through June 30, 1990, **allowable enhanced recovery project costs** shall include only incremental capital costs and incremental operating expenses associated with the enhanced recovery project.

(b) **Enhanced recovery project with beginning date between July 1, 1990, and June 30, 1993.** For any enhanced recovery project whose beginning date was July 1, 1990, through June 30, 1993, **allowable enhanced recovery project costs** shall be limited to the incremental capital costs of project start up, including the cost of completing any well necessary to the project and of converting any existing well to handle secondary or tertiary injection of liquids, gas or other matter. No expenditure after the completion date of such wells shall be included.

(c) **Secondary enhanced recovery project with beginning date on or after July 1, 1993, and before July 1, 2000.** For any secondary enhanced recovery project with a project beginning date on or after July 1, 1993, and before July 1, 2000, **allowable enhanced recovery project costs** shall include only incremental capital costs and fifty percent (50%) of incremental operating expenses, provided however, that the period for project payback shall not exceed a period of ten (10) years from the project beginning date.

(d) **Tertiary enhanced recovery project with beginning date on or after July 1, 1993, and before July 1, ~~2014~~2020.** For any tertiary enhanced recovery project with a project beginning date on or after July 1, 1993, and before July 1, ~~2014~~2020, **allowable enhanced recovery project costs** shall include only incremental capital costs and incremental operating expenses, excluding administrative expenses and the capital expense of pipelines constructed to transport carbon dioxide to a tertiary recovery project, provided such payback shall not exceed a period of ten (10) years from the project beginning date.

(e) **Excluded costs.** The cost of tank batteries, meters, pipelines or other external equipment shall not be included in allowable enhanced recovery project costs. Allowable costs shall be determined using generally accepted accounting principles such as outlined in the **"Council of Petroleum Accountants Society (COPAS) - Accounting Procedure Form for Joint Operations"** and **"COPAS Bulletin No. 16"**, or subsequent revisions thereto.

710:45-9-34. Summary reports; due dates; final project report

(a) For secondary recovery projects approved prior to July 1, 2000, and tertiary recovery projects approved prior to July 1, ~~2014~~2020, operators of exempt projects will submit to the Oklahoma Tax Commission annual summaries of project operations, on each anniversary of the project's beginning date, showing:

(1) Original capital investment in the enhanced recovery project;

(2) Additional investments in the enhanced recovery project;

(3) Enhanced recovery project operating expense for previous years, when applicable;

(4) Enhanced recovery project operating expense for the current year, when applicable;

(5) Schedule of project production (volume and value) by year of operation;

(6) Royalty payments, by year; and.

(7) Computation of revenue applied to project payback.

(b) The annual summary is to be filed with the Oklahoma Tax Commission on or before the sixtieth (60th) day following each anniversary of the project's beginning date.

(c) A final project report must be filed within sixty (60) days of achieving project payback.

710:45-9-35. Expiration of exemption for incremental production

For secondary recovery projects approved prior to July 1, 2000, and tertiary recovery projects approved prior to July 1, ~~2014~~2020, once the gross working interest revenue equals the enhanced recovery project cost, the exemption of incremental production shall end and the Oklahoma Tax Commission shall resume collection of the Gross Production Tax thereon.

PART 9. PRODUCTION ENHANCEMENT PROJECTS

710:45-9-40. Scope of Part 9

Exemption from the levy of gross production tax on the incremental production which results from a production enhancement project with a project beginning date on or after July 1, 1994, and prior to July 1, ~~2014~~2020, set out in 68 O.S. § 1001(G) shall be determined according to the provisions of this Part, which have been jointly adopted by the Oklahoma Corporation Commission and Oklahoma Tax Commission pursuant to 68 O.S. § 1001(M)(1).

710:45-9-41. Definitions

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

"Base production" means the average monthly amount of production for the twelve-month period immediately prior to the commencement of the project or the average monthly amount of production for the twelve-month period immediately prior to the commencement of the project less the monthly rate of production decline for the project for each month beginning one hundred eighty (180) days prior to the commencement of the project. The monthly rate of production decline shall be equal to the average extrapolated monthly decline rate for the twelve-month period immediately prior to the commencement of the project based on the production history of the well. If the well or wells covered by the application had production for less than the full twelve-month period prior to the filing of the application for the production enhancement project, the base production shall be the average monthly production for the months during that period that the well or wells produced.

"Effective date" means the project beginning date for the production enhancement project.

"Exemption period" means a period of twenty-eight (28) months from the date of first sale after completion of the production enhancement project.

"Incremental production" means the amount of crude oil, natural gas or other hydrocarbons which are produced as a result of the production enhancement project in excess of the base production.

"Production enhancement project" means:

(A) For production enhancement projects having a project beginning date prior to July 1, 1997, any workover or recompletion, as those terms are defined in this Section, or fracturing of a producing well.

(B) For production enhancement projects having a project beginning date on or after July 1, 1997, and prior to July 1, ~~2014~~2020, any workover or recompletion, as those terms are defined in this Section, any reentry of plugged and abandoned wellbores, or addition of well or field compression.

"Recompletion" means:

(A) For production enhancement projects having a project beginning date prior to July 1, 1997, any downhole operation in an existing oil well or gas well that is conducted to establish production of oil or gas from any geological interval not currently completed or producing in such existing oil or gas well.

(B) For production enhancement projects having a project beginning date on or after July 1, 1997, and prior to July 1, ~~2014~~2020, any downhole operation in an existing oil well or gas well that is conducted to establish production of oil or gas from any geologic interval not currently completed or producing in such existing oil or gas well within the same or a different geologic formation.

"Workover" means any downhole operation in an existing oil or gas well that is designed to sustain, restore or increase the production rate or ultimate recovery in a geologic interval currently completed or producing in said existing oil or gas well. For production enhancement projects having a project beginning date prior to July 1, 1997, **"workover"** includes, but is not limited to, acidizing, reperforating, fracture treating, sand/paraffin removal, casing repair, squeeze cementing, or setting bridge plugs to isolate water productive zones from oil or gas productive zones, or any combination thereof. For production enhancement projects having a project beginning date on or after July 1, 1997, and prior to July 1, ~~2014~~2020, **"workover"** includes, but is not limited to, acidizing; reperforating; fracture treating; sand, paraffin, or scale removal or other wellbore cleanouts; casing repair; squeeze cementing; installation of compression on a well or group of wells or artificial lifts on oil, gas, or oil and gas, wells, including plunger lifts, rod pumps, submersible pumps and coiled tubing velocity strings; downsizing existing tubing to reduce well

loading; downhole commingling; bacteria treatments; upgrading the size of pumping unit equipment; setting bridge plugs to isolate water production zones; or any combination thereof. **"Workover"** shall not mean the routine maintenance, routine repair, or like-for-like replacement of downhole equipment such as rods, pumps, tubing, packers, or other mechanical devices.

710:45-9-43. Rebates - Refund procedure

(a) **Request to Oklahoma Tax Commission for a tax refund.** If the Oklahoma Corporation Commission grants the application, the operator or one of the working interest owners in the well, on behalf of the well operator and the other owners of the well, shall make its request for refund by letter to the Compliance Division, Oklahoma Tax Commission. Such letter request shall state the reason for refund and the amount claimed and must be accompanied by the following:

(1) A copy of the application approved by the Corporation Commission certifying the well as production enhanced;

(2) A properly completed OTC Form 328 Gross Production 841/495 Refund Report; and

(3) If the refund request is filed by any person other than the party named in the application, a notarized affidavit, signed by the party named in the application must be filed, authorizing the applicant to apply for the refund.

(b) ~~**No time limitation on rebate for prior periods.** Approval of a "Production Incentive" for production periods prior to July 1, 2003, shall not be time barred by either the date of certification or the date of filing a claim for refund of the rebate of gross production tax.~~

~~(c)~~ **Documentation of required investment.** For production periods beginning on or after July 1, 2003, no refund shall be paid unless the person authorized to make the claim for refund on behalf of the aggregate owners and operator provides a written statement demonstrating that an amount has been invested which is equal to, or greater than the amount of the refund. The required investment in the exploration for, or production of, oil or natural gas in this state may be made by any individual or combination of aggregate owners and operators, but may not be based upon amounts invested prior to three years from the date of the claim. Any investment used to qualify for a rebate/refund pursuant to this Section shall not be used to qualify for any other refund/rebate.

(~~d~~c) **Refund limited to interest owners of record and operators at time of qualifying act.** Only the operator and interest owners of record at the time of the qualifying act are eligible for the rebate of gross production tax attributable to their interest in the project.

(1) In the case of a change in the operator of a qualified project, it is permissible for the new operator to file the claim for refund on behalf of all participating interest owners for the prior and the current periods, although the new operator would not be eligible for any share in the refund.

(2) A former operator or interest owner may also file the claim for the periods in which the owner or operator actively participated in the project and distribute the appropriate refund amounts to the eligible interest owners.

(~~e~~d) **Notice of changes in operator and interest owners.** Effective July 1, 2004, the person filing a claim for refund pursuant to this Section shall provide written notice of any changes in the operator or interest owners that have occurred in the project. Refunds shall be based solely upon the interest owners and operators in place at the time of the qualifying act.

(~~f~~e) **Claim limitation.** No claims for rebates shall be filed for production periods prior to July 1, 2003. For production periods beginning on or after July 1, 2003, no claim for rebate pursuant to 68 O.S. § 1001(L) shall be filed more than eighteen (18) months after the first day of the fiscal year in which the refund is initially available.

(~~g~~f) **Method of appeal.** If the refund is denied the applicant may file an appeal under the provisions of Title 68, Sections 227 and 228 of the Oklahoma Statutes.

PART 11. REESTABLISHMENT OF PRODUCTION FROM AN INACTIVE WELL

710:45-9-51. Definitions

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

"Effective date" means the date on which the reestablishment of production has occurred.

"Exemption period" means a period of twenty-eight (28) months from the date upon which production from an inactive well is reestablished.

"Inactive well" means a well which can be defined pursuant to one of the following:

(A) A well which, after July 1, 1997, experiences mechanical failure or loss of mechanical integrity, as defined by the Corporation Commission, including, but not limited to, casing leaks, collapse of casing, or loss of equipment in a wellbore, or any similar event which causes cessation of production and results in a workover of the well, as evidenced by the use of a workover rig or other mechanical device being placed over the well to repair the well or equipment.

(B) A well on which work to reestablish production commenced on or after July 1, 1994, and on or before June 30, 1997, that has not produced oil, gas, or oil and gas for a period of not less than two (2) years, as evidenced by the appropriate forms on file with the Oklahoma Corporation Commission reflecting the well's status.

(C) A well on which work to reestablish production commenced on or after July 1, 1997, and on or before July 1, ~~2014~~2020, that has not produced oil, gas, or oil and gas for a period of not less than one (1) year, as evidenced by the appropriate forms on file with the Oklahoma Corporation Commission, reflecting the well's status.

710:45-9-53. Rebates - Refund procedure

(a) **Request to Oklahoma Tax Commission for a tax refund.** If the Oklahoma Corporation Commission grants

the application, the operator or one of the working interest owners in the well, on behalf of the well operator and the other owners of the well, shall make its request for refund by letter to the Compliance Division, Oklahoma Tax Commission. Such letter request shall state the reason for refund and the amount claimed and must be accompanied by the following:

(1) A copy of the application approved by the Corporation Commission certifying the well as an inactive well for which production has been reestablished;

(2) A copy of an approved OTC Form 320C that shows the date of the reestablishment of production of oil and/or gas;

(3) A properly completed OTC Form 328 Gross Production 841/495 Refund Report; and

(4) If the refund request is filed by any person other than the party named in the application, a notarized affidavit, signed by the party named in the application must be filed, authorizing the applicant to apply for the refund.

(b) ~~**No time limitation on rebate for prior periods.** Approval of a "Reestablished Incentive" for production periods prior to July 1, 2003, shall not be time barred by either the date of certification or the date of filing a claim for refund of the rebate of gross production tax.~~

~~(c)~~ **Documentation of required investment.** For production periods beginning on or after July 1, 2003, no refund shall be paid unless the person authorized to make the claim for refund on behalf of the aggregate owners and operator provides a written statement demonstrating that an amount has been invested which is equal to, or greater than the amount of the refund. The required investment in the exploration for, or production of, oil or natural gas in this state may be made by any individual or combination of aggregate owners and operators, but may not be based upon amounts invested prior to three years from the date of the claim. Any investment used to qualify for a rebate/refund pursuant to this Section shall not be used to qualify for any other refund/rebate.

(~~d~~c) **Refund limited to interest owners of record and operators at time of qualifying act.** Only the operator and interest owners of record at the time of the qualifying act are eligible for the rebate of gross production tax attributable to their interest in the project.

(1) In the case of a change in the operator of a qualified project, it is permissible for the new operator to file the claim for refund on behalf of all participating interest owners for the prior and the current periods, although the new operator would not be eligible for any share in the refund.

(2) A former operator or interest owner may also file the claim for the periods in which the owner or operator actively participated in the project and distribute the appropriate refund amounts to the eligible interest owners.

(~~e~~d) **Notice of changes in operator and interest owners.** Effective July 1, 2004, the person filing a claim for refund pursuant to this Section shall provide written notice of any changes in the operator or interest owners that have occurred in the project. Refunds shall be based solely upon the interest owners and operators in place at the time of the qualifying act.

(~~f~~e) **Claim limitation.** No claims for rebates shall be filed for production periods prior to July 1, 2003. For production periods beginning on or after July 1, 2003, no claim for rebate pursuant to 68 O.S. § 1001(L) shall be filed more than eighteen (18) months after the first day of the fiscal year in which the refund is initially available.

(~~g~~f) **Method of appeal.** If the refund is denied the applicant may file an appeal under the provisions of Title 68, Sections 227 and 228 of the Oklahoma Statutes.

PART 13. DEEP WELLS

710:45-9-60. Scope of Part 13

(a) **General provisions.** Exemption from the levy of gross production tax on the production of gas, oil, or gas and oil from wells certified as being "Deep Wells" set out in 68 O.S. § 1001(H) shall be determined according to the provisions of this Part, which have been jointly adopted by the Oklahoma Corporation Commission and the Oklahoma Tax Commission pursuant to 68 O.S. § 1001(M)(1).

(b) **Definitions.** For purposes of qualifying for the exemption, "**depth**" means the length of the maximum continuous string of drill pipe utilized between the drill bit face and the drilling rig's kelly bushing.

(c) **Exemption for wells spudded between July 1, 1994, and June 30, 1997, to a depth of fifteen thousand (15,000) feet or greater.** Deep wells spudded between July 1, 1994, and June 30, 1997, and drilled to a depth of fifteen thousand (15,000) feet or greater shall be exempt from the gross production tax, beginning from the date of first sale, for a period of twenty-eight (28) months.

(d) **Exemption for wells spudded between July 1, 1997, and June 30, 2002, to a depth of twelve thousand five hundred (12,500) feet.** Deep wells spudded between July 1, 1997, and June 30, 2002, and drilled to a depth of twelve thousand five hundred (12,500) feet or greater shall be exempt from the gross production tax, beginning from the date of first sale, for a period of twenty-eight (28) months.

(e) **Exemption for wells spudded on or after July 1, 2002.** Deep wells spudded on or after July 1, 2002, shall be eligible for an exemption from the gross production tax which shall begin from the date of first sale, and vary as to duration in relation to the depth of the well.

(1) **12,500 to 14,999 feet and spudded between July 1, 2002 and July 1, ~~2014~~2015.** The duration of the tax incentive for wells drilled to this depth is twenty-eight (28) months.

(2) **15,000 to 17,499 feet and spudded between July 1, 2002 and ~~June 30~~July 1, 2015.** The duration of the tax incentive for wells drilled to this depth is forty-eight (48) months.

(3) **17,500 feet or greater and spudded between July 1, 2002 and ~~June 30~~July 1, 2015.** The duration of the tax incentive for wells drilled to this depth is sixty (60) months.

710:45-9-62.1. Rebates - Refund procedure

(a) **Request to Oklahoma Tax Commission for a tax refund.** If the Oklahoma Corporation Commission grants the

application for production periods prior to July 1, 2011, the operator or one of the working interest owners in the well, on behalf of the well operator and the other owners of the well, shall make its request for refund by letter to the Compliance Division, Oklahoma Tax Commission. Such letter request shall state the reason for refund and the amount claimed and must be accompanied by the following:

(1) A copy of an application approved by the Corporation Commission certifying the well as a well spudded within the applicable time periods and drilled to the prescribed depths provided in *OAC* 165:10-21-45;

(2) A copy of an approved OTC Form 320A that shows date of first sale of production;

(3) For production periods prior to July 1, 2009, a properly completed OTC Form 328 Gross Production 841/495 Refund Report; and

(4) For the production periods of July 1, 2010 through June 30, 2011, an electronically filed OTC Form 328 DR Gross Production Deferred Rebate Report.

(5) If the refund request is filed by any person other than the party named in the application, a notarized affidavit, signed by the party named in the application must be filed, authorizing the applicant to apply for the refund.

(b) ~~**No time limitation on rebate for prior periods.** Approval of a "Deep Well Incentive" for production periods prior to July 1, 2003, shall not be time barred by either the date of certification or the date of filing a claim for refund of the rebate of gross production tax.~~

(~~c~~) **Documentation of required investment.** For production periods beginning on or after July 1, 2003 and prior to July 1, 2011, no refund shall be paid unless the person authorized to make the claim for refund on behalf of the aggregate owners and operator provides a written statement demonstrating that an amount has been invested which is equal to, or greater than the amount of the refund. The required investment in the exploration for, or production of, oil or natural gas in this state may be made by any individual or combination of aggregate owners and operators, but may not be based upon amounts invested prior to three years from the date of the claim. Any investment used to qualify for a rebate/refund pursuant to this Section shall not be used to qualify for any other refund/rebate.

(~~d~~c) **Refund limited to interest owners of record and operators at time of qualifying act.** For production periods prior to July 1, 2011, only the operator and interest owners of record at the time of the qualifying act are eligible for the rebate of gross production tax attributable to their interest in the project.

(1) In the case of a change in the operator of a qualified project, it is permissible for the new operator to file the claim for refund on behalf of all participating interest owners for the prior and the current periods, although the new operator would not be eligible for any share in the refund.

(2) A former operator or interest owner may also file the claim for the periods in which the owner or operator actively participated in the project and distribute the appropriate refund amounts to the eligible interest owners.

(~~e~~d) **Notice of changes in operator and interest owners.** For production periods beginning July 1, 2004 and prior to July 1, 2011, the person filing a claim for refund pursuant to this Section shall provide written notice of any changes in the operator or interest owners that have occurred in the project. Refunds shall be based solely upon the interest owners and operators in place at the time of the qualifying act.

(~~f~~e) **Claim limitation.** No claims for rebates shall be filed for production periods prior to July 1, 2003. For production periods beginning on or after July 1, 2003 and prior to July 1, 2006, no claim for rebate pursuant to 68 O.S. § 1001(L) shall be filed more than eighteen (18) months after the first day of the fiscal year in which the refund is initially available.

(~~g~~f) **Method of appeal.** If the refund is denied the applicant may file an appeal under the provisions of Title 68, Sections 227 and 228 of the Oklahoma Statutes.

PART 15. NEW DISCOVERY WELLS

710:45-9-70. Scope of Part 15

Exemption from the levy of gross production tax on the production of gas, oil, or gas and oil from wells spudded or reentered between July 1, 1995 and July 1, ~~2014~~2015, which qualify as a new discovery well pursuant to Title 68, Section 1001(I) shall be determined according to the provisions of this Part, which have been jointly adopted by the Oklahoma Corporation Commission and the Oklahoma Tax Commission pursuant to 68 O.S. § 1001(M)(1).

710:45-9-71. Definitions

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

"New discovery" means production of oil, gas, or oil and gas from:

(A) A well, spudded or reentered on or after July 1, 1997, which discovers crude oil in paying quantities, and is located more than one (1) mile from the nearest oil well producing from the same producing formation.

(B) A well, spudded or reentered on or after July 1, 1997, and prior to July 1, ~~2014~~2015, which discovers crude oil in paying quantities, and is located more than one (1) mile from the nearest oil well producing from the same producing interval of the same formation.

(C) A well, spudded or reentered prior to July 1, 1997, which discovers crude oil in paying quantities beneath current production in a deeper producing formation, located more than one (1) mile from the nearest oil well producing from the same deeper producing formation.

(D) A well, spudded or reentered on or after July 1, 1997, and prior to July 1, ~~2014~~2015, which discovers crude oil in paying quantities beneath current production in a deeper producing interval, located more than one (1) mile from the nearest oil well producing from the same deeper producing interval.

(E) A well, spudded or reentered prior to July 1, 1997, which discovers natural gas in paying quantities, and is located more than two (2) miles from the nearest gas well producing from the same producing formation.

(F) A well, spudded or reentered on or after July 1, 1997, and prior to July 1, ~~2014~~2015, which discovers natural gas in paying quantities, and is located more than two (2) miles from the nearest gas well producing from the same producing interval.

(G) A well, spudded or reentered prior to July 1, 1997, which discovers natural gas in paying quantities beneath current production in a deeper producing formation, that is more than two (2) miles from the nearest gas well producing from the same deeper producing formation.

(H) A well, spudded or reentered on or after July 1, 1997, and prior to July 1, ~~2014~~2015, which discovers natural gas in paying quantities beneath current production in a deeper producing interval, that is more than two (2) miles from the nearest gas well producing from the same deeper producing interval.

710:45-9-73. Rebates - Refund procedure

(a) **Request to Oklahoma Tax Commission for a tax refund.** If the Oklahoma Corporation Commission grants the application, the operator or one of the working interest owners in the well, on behalf of the well operator and the other owners of the well, shall make its request for refund by letter to the Compliance Division, Oklahoma Tax Commission. Such letter request shall state the reason for refund and the amount claimed and must be accompanied by the following:

(1) A copy of the application approved by the Corporation Commission certifying the well as a new discovery well spudded or re-entered between July 1, 1995 and July 1, ~~2014~~2015;

(2) A copy of an approved OTC Form 320A that shows date of first sale of production;

(3) A properly completed OTC Form 328 Gross Production 841/495 Refund Report; and

(4) If the refund request is filed by any person other than the party named in the application, a notarized affidavit, signed by the party named in the application must be filed, authorizing the applicant to apply for the refund.

(b) ~~**No time limitation on rebate for prior periods.** Approval of a "New Discovery Incentive" for production periods prior to July 1, 2003, shall not be time-barred by either the date of certification or the date of filing a claim for refund of the rebate of gross production tax.~~

~~(c)~~ **Documentation of required investment.** For production periods beginning on or after July 1, 2003, no refund shall be paid unless the person authorized to make the claim for refund on behalf of the aggregate owners and operator provides a written statement demonstrating that an amount has been invested which is equal to, or greater than the amount of the refund. The required investment in the exploration for, or production of, oil or natural gas in this state may be made by any individual or combination of aggregate owners and operators, but may not be based upon amounts invested prior to three years from the date of the claim. Any investment used to qualify for a rebate/refund pursuant to this Section shall not be used to qualify for any other refund/rebate.

(~~d~~c) **Refund limited to interest owners of record and operators at time of qualifying act.** Only the operator and interest owners of record at the time of the qualifying act are eligible for the rebate of gross production tax attributable to their interest in the project.

(1) In the case of a change in the operator of a qualified project, it is permissible for the new operator to file the claim for refund on behalf of all participating interest owners for the prior and the current periods, although the new operator would not be eligible for any share in the refund.

(2) A former operator or interest owner may also file the claim for the periods in which the owner or operator actively participated in the project and distribute the appropriate refund amounts to the eligible interest owners.

(~~e~~d) **Notice of changes in operator and interest owners.** Effective July 1, 2004, the person filing a claim for refund pursuant to this Section shall provide written notice of any changes in the operator or interest owners that have occurred in the project. Refunds shall be based solely upon the interest owners and operators in place at the time of the qualifying act.

(~~f~~e) **Claim limitation.** No claims for rebates shall be filed for production periods prior to July 1, 2003. For production periods beginning on or after July 1, 2003, no claim for rebate pursuant to 68 O.S. § 1001(L) shall be filed more than eighteen (18) months after the first day of the fiscal year in which the refund is initially available.

(~~g~~f) **Method of appeal.** If the refund is denied the applicant may file an appeal under the provisions of Title 68, Sections 227 and 228 of the Oklahoma Statutes.

PART 17. ECONOMICALLY AT-RISK LEASES

710:45-9-82. Exemption period

~~The exemption for economically at risk oil leases is limited to calendar years 1997 and 1998.~~ The exemption for economically at risk oil and gas leases is limited to calendar years 2005 through ~~2013~~2020, with each year being claimed separately. No claims for rebates regarding the economically at risk leases shall be permitted after December 31, 2015 for production periods occurring between calendar years 2005 through 2013. No claims for rebates regarding the economically at risk leases for production periods occurring between calendar years 2014 through 2020 shall be claimed or paid more than eighteen (18) months after the date that the refund is first available.

710:45-9-84. Refund procedure

(a) **Issuance of refund.** Upon certification by the Commission, a refund of the gross production taxes paid in the previous calendar year for the lease shall be issued after July 1 of the subsequent year, to the well operator or a designee.

(b) **Assignment of a designee.** If the refund is to be issued to a party other than the recognized operator, a notarized affidavit,

signed by the be operator must be submitted to the Commission authorizing the designee to receive the refund.

~~(c) **No time limitation on rebate for qualifying wells.** Approval of an "Economically at Risk Oil Lease" shall not be time barred by either the date of certification or the date of filing a claim for refund of the rebate of gross production tax.~~

PART 19. PRODUCTION USING THREE DIMENSIONAL SEISMIC SHOOTS

710:45-9-90. Scope of Part 19

Exemption from the levy of gross production tax on the production of oil, gas or oil and gas from a well, drilling of which is commenced after July 1, 2000, and prior to July 1, ~~2014~~2015, located within the boundaries of a three-dimensional seismic shoot and drilled based on three-dimensional seismic technology, as set out in 68 O.S. § 1001(J), shall be determined according to the provisions of this Part. [**See:** 68 O.S. § 1001(M)(1); Amended at 21 Ok Reg 1128, eff 5-13-04]

710:45-9-92. Qualification procedure

(a) **General provisions.** The provisions of this Section establish criteria for determining if an operator producing oil, gas or oil and gas from a well, drilling of which is commenced after July 1, 2000, and prior to July 1, ~~2014~~2015, located within the boundaries of a three-dimensional seismic shoot and drilled based on three-dimensional seismic technology, has met the required conditions to qualify the production from such a well for the exemption from the Gross Production Tax. [**See:** 68 O.S. § 1001(J)]

(b) **Administrative approval and determination.** An operator seeking an exemption of the gross production tax on production from a well located within the boundaries of a three-dimensional seismic shoot and drilled based on such technology, shall make application to the Oklahoma Corporation Commission on a Form 1534 for a determination that the well qualifies for such exemption, as provided in 68 O.S.§ 1001(J).

(1) If the application is administratively approved, a copy shall be forwarded to the operator.

(2) To obtain the tax exemption, the operator shall forward a copy of the approved application to the Oklahoma Tax Commission, together with any other data required by that agency pursuant to OAC 165:10-21-88.

(3) Any data, maps and other information submitted with the OCC Form 1534 for determination that a well qualifies for the exemption provided in this paragraph shall be held as confidential information by the Conservation Division and/or Commission, and shall be returned to the applicant or destroyed upon approval of the application.

710:45-9-93. Rebates - Refund procedure

(a) **Request to Oklahoma Tax Commission for a tax refund.** If the Oklahoma Corporation Commission grants the application, the well operator or one of the working interest owners in the well, on behalf of the well operator and the other owners of the well, shall make its request for refund by letter to the Compliance Division, Oklahoma Tax Commission. Such letter request shall state the reason for refund and the amount claimed and must be accompanied by the following:

(1) Corporation Commission order approving such application and containing a determination that the well meets the criteria of the statute insofar that its drilling was commenced after July 1, 2000, and prior to July 1, ~~2014~~2015; that it is located within the boundaries of a three-dimensional seismic shoot and was drilled based on such technology; and indicating whether the seismic shoot was shot either prior to, or after July 1, 2000.

(2) A schedule of production, by month, of the gross amounts of oil, gas, or oil and gas produced, and the gross values thereof, from the date of first sale until the date application is made to the Tax Commission.

(3) If the refund request is filed by any person other than the party named in the Oklahoma Corporation Commission order, a notarized affidavit, signed by the party named in the order must be filed, authorizing the applicant to apply for the refund.

(b) ~~**No time limitation on rebate for prior periods.** Approval of a "Three Dimensional Incentive" for production periods prior to July 1, 2003, shall not be time barred by either the date of certification or the date of filing a claim for refund of the rebate of gross production tax.~~

~~(c)~~ **Documentation of required investment.** For production periods beginning on or after July 1, 2003, no refund shall be paid unless the person authorized to make the claim for refund on behalf of the aggregate owners and operator provides a written statement demonstrating that an amount has been invested which is equal to, or greater than the amount of the refund. The required investment in the exploration for, or production of, oil or natural gas in this state may be made by any individual or combination of aggregate owners and operators, but may not be based upon amounts invested prior to three years from the date of the claim. Any investment used to qualify for a rebate/refund pursuant to this Section shall not be used to qualify for any other refund/rebate.

(~~d~~c) **Refund limited to interest owners of record and operators at time of qualifying act.** Only the operator and interest owners of record at the time of the qualifying act are eligible for the rebate of gross production tax attributable to their interest in the project.

(1) In the case of a change in the operator of a qualified project, it is permissible for the new operator to file the claim for refund on behalf of all participating interest owners for the prior and the current periods, although the new operator would not be eligible for any share in the refund.

(2) A former operator or interest owner may also file the claim for the periods in which the owner or operator actively participated in the project and distribute the appropriate refund amounts to the eligible interest owners.

(~~e~~d) **Notice of changes in operator and interest owners.** Effective July 1, 2004, the person filing a claim for refund pursuant to this Section shall provide written notice of any changes in the operator or interest owners that have occurred

in the project. Refunds shall be based solely upon the interest owners and operators in place at the time of the qualifying act.

(~~f~~e) **Claim limitation.** No claims for rebates shall be filed for production periods prior to July 1, 2003. For production periods beginning on or after July 1, 2003, no claim for rebate pursuant to 68 O.S. § 1001(L) shall be filed more than eighteen (18) months after the first day of the fiscal year in which the refund is initially available.

(~~g~~f) **Method of appeal.** If the refund is denied, the applicant may file an appeal under the provisions of Title 68, Sections 227 and 228 of the Oklahoma Statutes.

SUBCHAPTER 11. TRANSPORTERS

710:45-11-2. Transporter license and permits

The ~~Director of the Registration~~Taxpayer Assistance Division of the Oklahoma Tax Commission~~, or a designee,~~ is authorized to issue and renew non-transferrable licenses and vehicle permits, upon license and permit forms approved by the Commission, to transporters, other than railroad or pipeline transporters, of any product subject to the Oklahoma Gross Production Tax, upon receipt of the following:

(1) A properly completed Application for Transporters License upon a form approved by the Oklahoma Tax Commission;

(2) Completed and duly executed Gross Production Tax Bond ~~or cash bond~~ in the amount of One Thousand Dollars ($1,000.00), which has been approved by the Commission; and

(3) Payment of a fee in the amount of One Hundred Fifty Dollars ($150.00) for each license issued, renewed or reinstated and the first vehicle permit, and Five Dollars ($5.00) for each additional vehicle permit. [**See:** 68 O.S. § 1013]

SUBCHAPTER 15. RECLAIMERS AND RECLAIMING OPERATIONS

710:45-15-2. Reclaimer licenses

The ~~Director of the Registration~~Taxpayer Assistance Division of the Oklahoma Tax Commission~~, or a designee,~~ is authorized to issue and renew non-transferrable licenses, upon license forms approved by the Commission, to reclaimers of products subject to the Oklahoma Gross Production Tax, upon receipt of the following:

(1) A properly completed Application for Reclaimers License upon a form approved by the Oklahoma Tax Commission.

(2) A ~~cash deposit,~~ surety bond~~,~~ or other security approved by the Tax Commission, as guaranty for payment of all taxes, penalties and interest. Security shall be in the amount of Ten Thousand Dollars ($10,000.00) or three months tax liability, whichever is greater, for each license issued, except when issued for a salt water disposal well. Security for each license issued for a salt water disposal well shall be in the amount of $2,500 or three months tax liability, whichever is greater. A person or firm having five or more licenses shall be required to post security in the total amount of fifty thousand dollars ($50,000.00) or three months tax liability, whichever is greater; except that for persons or firms having five or more licenses for salt water disposal facilities, the security requirement shall be a total of ten thousand dollars ($10,000.00) or three months tax liability, whichever is greater.

(3) A One Hundred Fifty Dollar ($150.00) three-year license fee for each new, renewed, or reinstated license. [**See:** 68 O.S. §1015.1]

[OAR Docket #15-424; filed 6-10-15]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 50. INCOME

[OAR Docket #15-425]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 7. Remittances
710:50-7-2 [REVOKED]
Subchapter 13. Estimated Tax
710:50-13-2 [REVOKED]
710:50-13-6 [AMENDED]
Subchapter 15. Oklahoma Taxable Income
Part 7. Credits against Tax
710:50-15-85 [REVOKED]
710:50-15-93 [REVOKED]
710:50-15-101 [AMENDED]
710:50-15-107 [AMENDED]
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SUPERSEDED EMERGENCY ACTIONS:
n/a
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n/a
ANALYSIS:
Section **710:50-7-2,** which provides for the application of income tax payments, has been revoked. Section **710:1-3-46** already provides guidance for the application of partial payments for all tax types.

Section **710:50-13-2** has been revoked and that language added to Section **710:50-13-6** to improve readability as both rules address the payment of Oklahoma estimated income tax.

Section **710:50-13-6** has been further amended to reflect a change in policy; a taxpayer is no longer required to include their social security number on their payment instrument.

Section **710:50-15-85** has been revoked to reflect the provisions of Section 1 of House Bill 1680 [2005] which sunsetted the income tax credit for Oklahoma agricultural producers on December 31, 2009. **[68:2357.25]**

Section **710:50-15-93** has been revoked to reflect the provisions of House Bill 2308 [2013] which repealed the tax credit for the development of commercial space industries. **[68:2357.13]**

Section **710:50-15-101** has been amended to implement the provisions of Senate Bill 1151 which added a sunset date to the film and music profit reinvestment income tax credit. **[68:2357.101]**

Section **710:50-15-107** has been amended to implement the provisions of Senate Bill 1152 which added sunset dates to the Credit for Eligible Wages Paid by an Employer to an Injured Employee and the Credit for Modification Expenses Paid by an Employer for an Injured Employee. **[68:2357.47]**

Section **710:50-15-109**, income tax credit for qualified employers and employees of the aerospace sector, has been amended to implement the provisions of House Bill 2509 which extended the sunset date and amended the definition of "qualified employee" **[68:2357.301 through 2357.304]**

Section **710:50-15-111** has been amended to implement the provisions of Senate Bill 1170 which added a sunset date to the wire transmitter fee income tax credit. **[68:2357.401]**

Sections **710:50-15-114** and **710:50-15-115** have been amended to implement the provisions of House Bill 2643 which amended the credits for Contributions to Scholarship-Granting Organizations and Educational Improvement Grant Organizations, and to reflect a change in policy - donors are no longer required to provide their social security number when making a donation. **[68:2357.206]**

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 7. REMITTANCES

710:50-7-2. Application of payments [REVOKED]

~~Any income tax payments received without designation shall be applied to the oldest outstanding liability first. Payments are first applied to tax, then interest and penalty.~~

SUBCHAPTER 13. ESTIMATED TAX

710:50-13-2. Payment of estimated tax [REVOKED]

~~OTC Form OW-8ES should be used to report and pay Estimated Oklahoma Income Tax. Print or type taxpayer's name, address and the amount of the payment on each voucher. To ensure proper credit, taxpayer's social security number should be included on the check.~~

710:50-13-6. Payment of estimated tax

(a) OTC Form OW-8-ES should be used to report and pay estimated Oklahoma Income Tax. Print or type taxpayer's name, Social Security Number or Federal I.D. Number, address and the amount of the payment on each voucher

(b) The first installment of Oklahoma Estimated Income Tax is to be paid on April 15 of the taxable year. Other payments must be made by the dates shown on the vouchers or corresponding dates for fiscal-year filers. ~~The filer's Social Security Number or Federal I.D. Number is to be written on the check and the check is to be attached to the completed voucher.~~ The estimated tax is to be applied to the succeeding tax year's Oklahoma Income Tax liability, and may be claimed on the succeeding tax year's Oklahoma Income Tax Return.

(~~b~~c) Refunds will be applied, at the taxpayer's request, to Oklahoma Estimated Income Tax for the following year, on the original Return only, and may not be adjusted, except as provided in this Section.

(~~c~~d) Refunds applied to the following year's Oklahoma Estimated Income Tax (at the taxpayer's request) may not be adjusted except in the following case: When a taxpayer claims on the Oklahoma Income Tax Return, a total estimated tax in excess of the amount actually paid and requests the resultant refund be applied to the next year's estimated tax, this produces an erroneous estimated tax figure for the following tax year. In this instance, the amount of credit to be applied to the following year and/or the figure reported for total Oklahoma Estimated Tax for the current year, may be adjusted to the correct amounts.

(~~d~~e) Provided, however, that when a refund is applied, at the Taxpayer's request, to the following year's Oklahoma Estimated Income Tax and either the Tax Commission or the Internal Revenue Service subsequently determines that additional tax is due for the original tax year, no delinquent interest shall be due on the difference between the original tax paid and the subsequently-determined amount of tax, so long as the refund applied exceeds the additional tax due and the taxpayer makes payment of the additional tax within sixty (60) days of the notice of assessment. In the event that the additional tax due exceeds the refund applied, delinquent interest shall be assessed on the amount of additional tax due from the date the original tax was due, until the total additional tax is paid.

(~~e~~f) All estimated tax payments should be paid under the Social Security Number listed first on the Oklahoma Income Tax Return.

SUBCHAPTER 15. OKLAHOMA TAXABLE INCOME

PART 7. CREDITS AGAINST TAX

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

~~(a) **General provisions.** Oklahoma agricultural producers may claim an income tax credit for direct investment in an Oklahoma producer-owned agricultural processing entity which is designed to develop and enhance the production, processing,~~

handling, and marketing of Oklahoma agricultural commodities. This credit will be available for the tax year in which the qualified investment is made.

(1) **For qualified investments made on or after January 1, 1997 but before December 31, 1998.** The credit for qualified investments will be thirty percent (30%).

(2) **For qualified investments made on or after January 1, 1999.** If the total credit allowed for qualified investments results in the reduction in total Oklahoma income tax of more than One Million Dollars ($1,000,000.00) in any previous calendar year, the percentage of the credit for qualified investment will be adjusted. The adjusted percentage allowable will be determined by multiplying thirty percent 30% times One Million Dollars ($1,000,000.00), then dividing the result by the credits claimed in the preceding calendar years.

(3) **For qualified investments made on or after January 1, 2006.** If the total credit allowed for qualified investments results in the reduction in total Oklahoma income tax of more than Two Million Dollars ($2,000,000.00) in any previous calendar year, the percentage of the credit for qualified investment will be adjusted. The adjusted percentage allowable will be determined by multiplying thirty percent (30%) times Two Million Dollars ($2,000,000.00), then dividing the result by the credits claimed in the preceding calendar years.

(b) **Definitions.** **"Qualified investment"**, for purposes of this Section, means and is limited to, direct investments by Oklahoma agricultural producers in Oklahoma producer-owned agricultural processing cooperatives, Oklahoma producer-owned agricultural processing ventures, Oklahoma producer-owned agricultural processing marketing associations, and Oklahoma owned and based corporations and partnerships. [**See:** 68 O.S. Section 2357.25(I)].

(c) **Limitations.** Under no circumstances will the credit percentage exceed thirty percent (30%). If the credit should exceed the amount of income tax due, any unused credit may be carried forward and applied against subsequent income tax liabilities for a period not to exceed six (6) years. In the event of credits being carried forward, the amount of credit, once established, shall not be reduced in the event of credit percentage reduction in subsequent years. This credit shall not be available to any taxpayer in years in which claimant received incentive payments pursuant to the Oklahoma Quality Jobs Program Act or the Saving Quality Jobs Act.

(d) **Information return required.** Oklahoma producer-owned agricultural processing entities must file an information return, on a form prescribed by the Commission, reporting the amount of direct investment made during the preceding calendar year. The information return must be filed by January 31.

(e) **Tax credit moratorium.** No credit may be claimed for investments made during the period of July 1, 2010 through June 30, 2012, for which the credit would otherwise be allowable. This credit may be claimed for tax year 2012 and subsequent tax years, for direct investment in certain Oklahoma producer-owned agricultural processing entities made on or after July 1, 2012.

710:50-15-93. Credit for qualified Oklahoma space transportation vehicle providers [REVOKED]

(a) **General provisions.** There shall be allowed a transferable credit against the tax imposed by 68 O.S. § 2355 or 36 O.S. §§624 or 628, for an investment in qualifying Space Transportation Vehicle Providers ("Providers"). In order to qualify for the credit Providers must meet certain eligibility requirements.

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

(1) **"Eligible investment"** means an unencumbered investment in a qualified Space Transportation Vehicle Provider made between January 1, 2001, and December 31, 2003.

(2) **"Equity capitalization"** means assets minus liabilities.

(3) **"Qualified space transportation vehicle provider"** means *any commercial provider organized under the laws of this state as a corporation or a limited liability company and engaged in designing, developing, producing, or operating commercial space transportation vehicles in this state.* [68 O.S. § 2357.42(C)(2)]

(4) **"Space transportation vehicles"** means *all types of vehicles or orbital or suborbital spacecraft, whether now in existence, developed in the future, or currently under design, development, construction, reconstruction, or reconditioning, constructed in this state and owned by a qualified space transportation vehicle provider, for the purpose of operating in, or transporting a payload to, from, or within, outer space, or in suborbital trajectory, and includes any component of such vehicle or spacecraft not specifically designed or adapted for a payload.* [68 O.S. § 2357.42(C)(3)]

(5) **"Subsequently refunded or returned"**, *when used in reference to an eligible investment, means an actual redemption by the qualified space transportation vehicle provider of the securities or other indicia of ownership in the qualified space transportation vehicle provider received by the investor from the investor's investment.* [68 O.S. § 2357.42(C)(4)]

(c) **Eligibility requirements.** In order to qualify for the credit, application must be made to the Oklahoma Tax Commission, along with supporting documentation outlining certain minimum qualifications. The Tax Commission must certify that the applicant meets the following minimum qualifications:

(1) The applicant must be headquartered in this state or ultimately controlled by an entity headquartered in this state;

~~(2) The applicant must have been pre-approved by the Oklahoma Department of Commerce to receive incentive payments under the Quality Jobs Program Act or the Former Military Facility Development Act as a basic industry. Determination of eligibility under the Quality Jobs Programs Act or the Former Military Facility Development Act is under the discretion of the Oklahoma Department of Commerce.~~

~~(3) The applicant must have at least Ten Million Dollars ($10,000,000) in equity capitalization.~~

~~(4) The applicant must have received a commitment from a local governmental entity in the aggregate amount of Fifteen Million Dollars ($15,000,000) under the terms outlined in 68 O.S. Section 2357.42(C)(1)(b)(3).~~

~~(d) **Certification process.** Upon a written request, the Tax Commission will certify, in writing, to an authorized agent or representative of a qualified provider that the eligibility requirements for the credit set out in Subsection (c) have been met. The Tax Commission, through its General Counsel, will review the documents submitted, which will vary on a case-by-case basis. Determination of the adequacy and sufficiency of all documentation provided to determine eligibility for the credit pursuant to this Section is at the discretion of the Office of the General Counsel.~~

~~(e) **Maximum credit.** The maximum amount of investment eligible for the credit is Thirty Million Dollars ($30,000,000). If more than one applicant is certified as eligible by the Tax Commission:~~

~~(1) Investors in the first approved qualified space transportation vehicle provider will be eligible for a credit based on the lesser of:~~

~~(A) Their eligible investment; or,~~

~~(B) Thirty Million Dollars ($30,000,000).~~

~~(2) Investors in the second and subsequent qualified space transportation vehicle providers approved will be eligible for the credit based on the lessor of:~~

~~(A) Their eligible investment; or,~~

~~(B) The difference between the total investments in previously approved Providers and Thirty Million Dollars ($30,000,000).~~

~~(f) **Amount of credit.** The credit will be available as a percentage of the eligible investment, as follows:~~

~~(1) In the first tax year after the eligible investment, ten and six-tenths of one percent (10.6 percent) of the eligible investment may be claimed and is redeemable.~~

~~(2) In the second tax year after the eligible investment, eleven and two-hundred-thirty-six one thousandths of one percent (11.236 percent) of the eligible investment may be claimed and is redeemable.~~

~~(3) In the third tax year after the eligible investment, eleven and ninety-one hundredths of one percent (11.91 percent) of the eligible investment may be claimed and is redeemable.~~

~~(4) In the fourth tax year after the eligible investment, twelve and six-hundred-twenty-four one thousandths of one percent (12.624 percent) of the eligible investment may be claimed and is redeemable.~~

~~(5) In the fifth tax year after the eligible investment, thirteen and three-hundred-eighty-one one thousandths of one percent (13.381 percent) of the eligible investment may be claimed and is redeemable.~~

~~(g) **Record retention.** Any qualified space transportation vehicle provider must maintain a record of the investments made in the qualifying space transportation vehicles between January 1, 2001, and December 31, 2003. Qualifying space transportation vehicle providers must submit to the Tax Commission the amount of total investment for this period not later than January 31, 2003. Qualifying space transportation vehicle providers must notify the Tax Commission in writing of any amounts refunded or returned to an investor. Such notification must include the amounts refunded, the recipient and the recipient's tax identification number.~~

~~(h) **Transferability.** The credit provided shall be freely transferable and failure to allow the tax credits or the recapture of the tax credits shall not affect the validity of the tax credits in the hands of a transferee of the initial investor or subsequent transferees.~~

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

(a) **General provisions.** ~~There~~For taxable years ending before January 1, 2015, there shall be allowed against the tax imposed by 68 O.S. § 2355, a credit equal to twenty-five percent (25%) of the profit from the investment in an existing Oklahoma film or music project with a production company to pay for production costs that is reinvested by the taxpayer with a production company for a new Oklahoma film or music project.

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

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

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

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

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

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

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

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

(D) the cost of *editing and related services,*

(E) *rental of facilities and equipment, and*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) **General provisions regarding credit based on wages.** ~~Effective for tax year 2006~~For taxable years ending before January 1, 2015, a credit of ten percent (10%) is available to employers based on wages paid for employees returning to work in restricted duties. The credit is based on eligible gross wages paid for a 90-day period. Eligible wages are those that are compensable under the Workers Compensation Act and are paid upon the employees return to work under restricted duty. The credit may not exceed five thousand dollars for any employee, and may not exceed twenty-five thousand dollars ($25,000) for any employer in a taxable year.

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

(A) **"Eligible wages"** are gross wages paid by an employer to an employee who is injured as a result

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

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

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

(b) **General provisions for credit based on modification expenses.** ~~Effective for tax year 2006~~ For taxable years ending before January 1, 2017, a credit of fifty percent (50%) is available for eligible modification expenses that enable an injured worker to return to work under restricted duty.

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

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

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

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

(c) **Tax credit moratorium.** No credit may be claimed for any expenditure made during the period of July 1, 2010 through June 30, 2012, for which the credit would otherwise be allowable. This credit may be claimed for tax year 2012 and subsequent tax years, for wages paid or modification expenses made on or after July 1, 2012.

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

(a) **General provisions.** For tax years beginning after December 31, 2008 and before January 1, ~~2015~~2018, three (3) credits are allowed against the tax imposed by Section 2355 of Title 68 for the employment of qualified employees in the aerospace sector. The three (3) credits are as follows:

(1) Credit for qualified employers for tuition reimbursement to qualified employees.

(2) Credit for qualified employers for compensation paid to qualified employees.

(3) Credit for qualified employees.

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

(1) **"Aerospace sector"** is a private or public organization that is:

(A) a manufacturer of aerospace or defense hardware and/or software;

(B) provides aerospace maintenance, repair or overhaul;

(C) supplies parts to the aerospace industry;

(D) provides services and/or support relating to the aerospace industry;

(F) provides research and development of aerospace technology and systems, or

(G) provides education or training of aerospace personnel.

(2) **"Compensation"** includes salary or other remuneration, wages subject to withholding tax paid to either a part-time employee or full-time employee and payments in the form of contract labor for which the payor is required to provide a Form 1099 to the person paid. Compensation does not include any employer-provided benefits, including but not limited to retirement, medical or health-care benefits; reimbursement for travel, meals, lodging or any other expense.

(3) **"Institution"** is any institution included within The Oklahoma State System of Higher Education or any other public or private college or university that is accredited by a national accrediting body.

(4) **"Qualified employer"** is an entity whose principal business activity involves the aerospace sector. This includes sole proprietors, general partnerships, limited partnerships, limited liability companies, corporations, or any other legally recognized business entity, or public entity.

(5) **"Qualified employee"** is any person, regardless of the date of hire by the qualified employer, newly employed by or contracting with a qualified employer in Oklahoma on or after January 1, 2009 ~~employed in Oklahoma~~. Further, the person must have been awarded an undergraduate or graduate degree from a qualified program by an institution. Qualified ~~employees do~~employee does not include a person employed in the aerospace sector in this state immediately preceding employment or contracting with a qualified employer. Qualified employee may include a person who was employed in the aerospace sector, but not as a full-time engineer, prior to being awarded an undergraduate or graduate degree from a qualified program by an institution or any person who has been awarded an undergraduate or graduate degree from a qualified program by an institution and is employed by

a professional staffing company and assigned to work in the aerospace sector in this state.

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

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

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

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

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

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

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

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

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

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

(2) The credit for compensation paid equals:

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

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

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

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

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

(e) **Credit for qualified employees.**

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

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

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

(f) **Tax credit moratorium.**

(1) No credit may be claimed for any tuition reimbursed by a qualified employer to a qualified employee for the period of July 1, 2010 through June 30, 2011 for which the credit would otherwise be allowable. For example:

(A) Qualified employee is hired by qualified employer on January 1, 2010. Qualified employer may receive a tax credit for tuition reimbursed from January 1, 2010 to June 30, 2010. Qualified employer shall not receive a tax credit for tuition reimbursed for the period of July 1, 2010 to June 30, 2011. Qualified employer may receive a tax credit for tuition reimbursed for the period of July 1, 2011 to December 31, 2013. Qualified employer shall not receive a tax credit for tuition reimbursed to the qualified employee on or after January 1, 2014 because it is outside the four (4) year limitation.

(B) Qualified employee is hired by qualified employer on July 1, 2010. Qualified employer shall not receive a tax credit for tuition reimbursed for the period of July 1, 2010 to June 30, 2011. Qualified employer may receive a tax credit for tuition reimbursed for the period of July 1, 2011 to June 30, 2014. Qualified employer shall not receive a tax credit for tuition reimbursed to the qualified employee on or after July 1, 2014 because it is outside the four (4) year limitation.

(2) No credit may be claimed for compensation paid to a qualified employee for the period of July 1, 2010 through June 30, 2011, for which the credit would otherwise be allowable. For example:

(A) Qualified employee is hired by qualified employer on January 1, 2010. Qualified employer may receive a tax credit for compensation paid for the period of January 1, 2010 to June 30, 2010. Qualified employer shall not receive a tax credit for compensation paid for the period of July 1, 2010 to June 30, 2011. Qualified employer may receive a tax credit for compensation paid for the period of July 1, 2011

to December 31, 2014. Qualified employer shall not receive a tax credit for compensation paid to a qualified employee on or after January 1, 2015 because it is outside the five (5) year limitation.

(B) Qualified employee is hired by qualified employer on July 1, 2010. Qualified employer shall not receive a tax credit for compensation paid for the period of July 1, 2010 to June 30, 2011. Qualified employer may receive a tax credit for compensation paid for the period of July 1, 2011 to June 30, 2015. Qualified employer shall not receive a tax credit for compensation paid to a qualified employee on or after July 1, 2015 because it is outside the five (5) year limitation.

(3) No credit may be claimed by a qualified employee for the period of July 1, 2010 through June 30, 2011, for which the credit would otherwise be allowable. For example:

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

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

710:50-15-111. Wire transfer fee credit

(a) **General provisions:** ~~For tax year 2009 and subsequent tax years~~For taxable years ending before January 1, 2017, a credit is allowed against the tax imposed under 68 O.S. § 2355 in the amount of all electronic funds transfers fees paid per 63 O.S. § 2-503.1j by any individual or entity.

(b) **When to claim credit:** The credit for fees paid between July 1, 2009 and December 31, 2010 cannot be claimed prior to January 1, 2011 and must be claimed on the 2010 income tax return. The credit for fees paid on or after January 1, 2011 must be claimed on the tax return that corresponds with the tax year during which the fees were paid.

(c) **Credit non-refundable, nontransferable; carryover provision.** This credit may not be taken as a refund; nor may it be transferred. If the credit exceeds a taxpayer's liability, unused credits may be carried over for five (5) succeeding years.

710:50-15-114. Credit for contributions to a scholarship-granting organization

(a) **General provisions.** An income tax credit is available for contributions to an eligible scholarship-granting organization. [68 O.S. § 2357.206]

(b) **Credit.** The credit is generally fifty percent (50%) of the total amount of contributions made during a taxable year, not to exceed One Thousand Dollars ($1,000) for each taxpayer or Two Thousand Dollars ($2,000) for married taxpayers filing jointly, or One Hundred Thousand Dollars ($100,000) for any taxpayer which is a legal business entity, subject to the limitation in ~~(d)~~(e) of this Section. Tax credits which are allocated by a pass-through entity to equity owners are only limited in amount for the income tax return of a natural person based upon the limitation of the total credit amount to the entity from which the tax credits have been allocated, and not limited to One Thousand Dollars ($1,000.00) for single individuals or limited to Two Thousand Dollars ($2,000.00) for married persons filing a joint return.

(c) **Two year commitment.** For a taxpayer who makes an eligible contribution and makes a written commitment to contribute the same amount for two (2) additional consecutive years, the credit shall be seventy-five percent (75%) of the amount of the contribution the first year, and fifty percent (50%) of the amount of the contributions the following two (2) years. The taxpayer shall provide evidence of the written commitment to the Tax Commission when the tax return claiming the credit is filed the first year.

(d) **Registration.** An eligible scholarship-granting organization is required to register with the Tax Commission (OTC Form 80002).

(~~d~~e) **Limitation of credit.** If total credits claimed exceed ~~$1,750,000~~$3,500,000 annually ~~for single individuals and married individuals filing jointly, or $1,750,000 for all other taxpayers,~~ the credit shall be equal to the taxpayer's proportionate share of the cap for the taxable year per ~~(e)(2)~~ (f)(2) of this Section. At least once each taxable year, the eligible scholarship-granting organization shall notify each contributor that Oklahoma law provides for a total statewide cap on the amount of income tax credits allowed annually.

(~~e~~f) **Annual notification.**

(1) By January 10 each year, the scholarship-granting organization shall provide electronically to the Tax Commission:

(A) The scholarship-granting organization's account number;

(B) The name ~~and social security number or federal employer identification number~~ of each contributor~~;~~ and sufficient other information to accurately determine the identity of each contributor;

(C) The date and amount of each contribution~~.~~; and

(D) Whether the taxpayer made a written commitment to contribute the same amount for two (2) additional consecutive years.

(2) By February 15 each year, the Tax Commission shall publish the percentage of the contribution which may be claimed as a credit on the Tax Commission's website. The scholarship-granting organizations shall notify contributors of that amount annually.

(~~f~~g) **Ninety percent (90%) requirement.** Effective January 1, 2014, a credit will not be allowed by the Tax Commission for contributions made to an eligible scholarship-granting organization if the organization's percentage of funds actually awarded is less than ninety percent (90%). In order to determine this amount, the total amount of funds actually awarded

over the most recent twenty-four (24) months shall be divided by the total amount available to award over the most recent twenty-four (24) months.

(~~g~~h) **When credits may be claimed.** Any tax credits which are earned by a taxpayer during the time period beginning on August 26, 2011 through December 31, 2012, may not be claimed for any taxable year beginning before January 1, 2013 and may not be used to file an amended tax return for any taxable year beginning before January 1, 2013.

(~~h~~i) **Limitations.** The credit will not reduce the tax liability of the taxpayer to less than zero (0) and any credit allowed but not used may be carried over, in order, to each of the three (3) subsequent taxable years. The credit is not transferable.

710:50-15-115. Credit for contributions to an educational improvement grant organization

(a) **General provisions.** An income tax credit is available for contributions to an eligible educational improvement grant organization. [68 O.S. § 2357.206]

(b) **Application.** An educational improvement grant organization shall submit an application to the Tax Commission (OTC Form 80001). The Tax Commission shall review and approve or disapprove the application, in consultation with the State Department of Education.

(c) **Credit.** The credit is generally fifty percent (50%) of the total amount of contributions made during a taxable year, not to exceed One Thousand Dollars ($1,000) for each taxpayer or Two Thousand Dollars ($2,000) for married taxpayers filing jointly or One Hundred Thousand Dollars ($100,000) for any taxpayer which is a legal business entity, subject to the limitation in (e) of this Section. Tax credits which are allocated by a pass-through entity to equity owners are only limited in amount for the income tax return of a natural person based upon the limitation of the total credit amount to the entity from which the tax credits have been allocated, and not limited to One Thousand Dollars ($1,000.00) for single individuals or limited to Two Thousand Dollars ($2,000.00) for married persons filing a joint return.

(d) **Two year commitment.** For a taxpayer who makes an eligible contribution and makes a written commitment to contribute the same amount for two (2) additional consecutive years, the credit shall be seventy-five percent (75%) of the amount of the contribution the first year, and fifty percent (50%) of the amount of the contributions the following two (2) years. The taxpayer shall provide evidence of the written commitment to the Tax Commission when the tax return claiming the credit is filed the first year.

(e) **Limitation of credit.** If total credits claimed exceed $1,500,000 annually, the credit shall be equal to the taxpayer's proportionate share of the cap for the taxable year per (f)(2) of this Section. At least once each taxable year, the educational improvement grant organization shall notify each contributor that Oklahoma law provides for a total statewide cap on the amount of income tax credits allowed annually.

(f) **Annual notification.**

(1) By January 10 each year, the educational improvement grant organization shall provide electronically to the Tax Commission:

(A) The educational improvement grant organization's account number;

(B) The name ~~and social security number or federal employer identification number~~ of each contributor~~;~~ and sufficient other information to accurately determine the identity of each contributor;

(C) The date and amount of each contribution; and

(D) Whether the taxpayer made a written commitment to contribute the same amount for two (2) additional consecutive years.

(2) By February 15 each year, the Tax Commission shall publish the percentage of the contribution which may be claimed as a credit on the Tax Commission's website. The educational improvement grant organization shall notify contributors of that amount annually.

(g) **Annual report.** In order to maintain eligibility, an educational improvement grant organization shall annually report the following information to the Tax Commission, on forms prescribed by the Tax Commission, on or before September 1 of each year:

(1) *The name of the innovative educational program or programs and the total amount of the grant or grants made to those programs during the immediately preceding school year,*

(2) *A description of how each grant was utilized during the immediately preceding school year and a description of any demonstrated or expected innovative educational improvements,*

(3) *The names of the public school and school districts where innovative educational programs that received grants during the immediately preceding school year were implemented,*

(4) *Where the organization collects information on a county-by-county basis, and*

(5) *The total number and total amount of grants made during the immediately preceding school year for innovative educational programs at public school by each county in which the organization made grants.*

(h) **Ninety percent (90%) requirement.** Effective January 1, 2014, a credit will not be allowed by the Tax Commission for contributions made to an eligible educational improvement grant organization if the organization's percentage of funds actually awarded is less than ninety percent (90%). In order to determine this amount, the total amount of funds actually awarded over the most recent twenty-four (24) months shall be divided by the total amount available to award over the most recent twenty-four (24) months.

(i) **When credits may be claimed.** Any tax credits which are earned by a taxpayer during the time period beginning on August 26, 2011 through December 31, 2012, may not be claimed for any taxable year beginning before January 1, 2013 and may not be used to file an amended tax return for any taxable year beginning before January 1, 2013.

(j) **Limitations.** The credit will not reduce the tax liability of the taxpayer to less than zero (0) and any credit allowed but

not used may be carried over, in order, to each of the three (3) subsequent taxable years. The credit is not transferable.

[OAR Docket #15-425; filed 6-10-15]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 60. MOTOR VEHICLES

[OAR Docket #15-426]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
710:60-1-3 [AMENDED]
Subchapter 3. Registration and Licensing
Part 1. General Provisions
710:60-3-23 [AMENDED]
Part 3. Penalties
710:60-3-32 [AMENDED]
Part 11. Other Vehicles
710:60-3-111 [AMENDED]
Part 14. All-Terrain Vehicles, Off-Road Motorcycles and Utility Vehicles
710:60-3-140 [AMENDED]
Part 15. Special License Plates
710:60-3-168 [AMENDED]
Subchapter 5. Motor Vehicle Titles
Part 5. Certificates of Title
710:60-5-51 [AMENDED]
710:60-5-66 [NEW]
Part 7. Transfer of Title
710:60-5-71 [AMENDED]
710:60-5-74 [AMENDED]
710:60-5-75 [AMENDED]
Part 11. Liens
710:60-5-111 [AMENDED]
710:60-5-115 [AMENDED]
710:60-5-116 [AMENDED]
Subchapter 7. Motor Vehicle Excise Tax
710:60-7-3 [AMENDED]
710:60-7-8 [AMENDED]
Subchapter 9. Motor Vehicle License Agents/Agencies
Part 5. Specific Recordkeeping Duties
710:60-9-52 [AMENDED]
Part 7. Specific Reporting Duties
710:60-9-72 [AMENDED]
Part 9. Specific Fiscal Duties
710:60-9-91 [AMENDED]
Part 11. Agency Operation
710:60-9-120 [AMENDED]
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ANALYSIS:

Section **710:60-1-3** has been amended to clarify policy regarding a motor license agent's access to, and release of, taxpayer information.

Sections **710:60-3-23** and **710:60-7-8** have been amended to implement the provisions of House Bill 3216 and Senate Bill 1199 which provide for a credit for registration fees and excise tax on a vehicle which is a replacement for a currently registered vehicle which was destroyed by a tornado. [**47:1132.3, 68:2103.1**]

Section **710:60-3-32** has been amended to clarify policy regarding documentation requirements for original title applicants bringing in used vehicles from another titling jurisdiction reflecting Oklahoma addresses. [**47:1105**]

Section **710:60-3-111** has been amended to clarify existing policy relating to utilization of an agricultural exemption permit to qualify for farm truck registration. [**47:1133, 1134**]

Section **710:60-3-140** has been amended to implement the provisions of Senate Bill 1397 which amended the definitions of "all-terrain vehicle" and "recreation off-highway vehicle" by removing the seating and steering descriptions, while adding a width requirement of 50 inches or less for ATVs and 65 inches or less for ROHVs. [**47:1102**]

Section **710:60-3-168** has been amended to implement Motor Vehicle Registration and License Tag compacts between certain Indian Tribes and the State of Oklahoma.

Section **710:60-5-51** has been amended to clarify existing policy relating to out-of-state document notarization and Oklahoma original title applicants intending to register their vehicles under the International Registration Plan (IRP). [**47:1105**]

New Section **710:60-5-66** has been added to clarify existing policy of contacting law enforcement when title application is made on a reported stolen vehicle. [**47:1105. 1107**]

Section **710:60-5-71** has been amended to establish policy relating to title applicants with certificates of title that have been reassigned by a non-dealer, providing an alternative for taxpayers possessing improperly reassigned certificates of title. [**47:1107**]

Sections **710:60-5-74** and **710:60-5-75** have been amended to clarify existing policy regarding the application of odometer branding on motor vehicles entering from another state.

Sections **710:60-5-111** and **710:60-5-115** have been amended to eliminate the entry of lien time to conform to current policy and statutes. [**47:1110**]

Section **710:60-5-116** has been amended to implement the provisions of Senate Bill 582 relating to possessory lien claims pursuant to Sections 91 and 91A of Title 42 of the Oklahoma Statutes.

Section **710:60-7-3** has been amended to clarify existing policy regarding the excise tax exemption relating to repossessed vehicles returned to former owner; vehicle must have been titled in Oklahoma prior to repossession for exemption to apply. [**68:2105**]

Sections **710:60-9-52** and **710:60-9-72** have been amended to revise and clarify motor license record retention and reporting requirements as a result of new system processes.

Sections **710:60-9-91** and **710:60-9-120** have been amended to reflect a change in policy regarding the inclusion of a taxpayer's social security number on payment instruments.

CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 1. GENERAL PROVISIONS

710:60-1-3. Confidentiality of motor vehicle information

(a) **Procedure for release of vehicle and lien information.** Vehicle and lien information may be released only to qualified requestors upon completion of OTC Form 769 and remittance of the statutory fee. Qualified requestors of recurring data from the Motor Vehicle system database must complete the "Service Contract for Purchase of Oklahoma Motor Vehicle Registration (MVR) Database" with the Tax Commission. Upon acceptance of the contract, the requested data may be provided at the appropriate processing fee established by the Commission. Requests for unique (one time) large data files from the Motor Vehicle system database may be made by submitting the appropriate request for information to the Oklahoma Tax Commission, Motor Vehicle Division for review. Upon approval, the requested data may be provided at the appropriate processing fee established by the Commission.

(b) **Who may obtain vehicle and lien information.** Vehicle and lien information may be released to:

(1) The current owner;

(2) An individual, on behalf of the current owner, with written authorization;

(3) A licensed wrecker or towing service, for notification to owners;

(4) A legitimate business, for purposes of:

(A) Verifying the accuracy of personal information submitted to the business by the individual to whom the requested information pertains; or

(B) Obtaining correct information for purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against, the individual to whom the requested information pertains;

(5) A requestor who is to use the information in conjunction with a civil, criminal, administrative, or arbitral proceeding in a federal, state, or local court or agency, or before any self-regulatory body. Use may include service of process, investigation in anticipation of litigation, and the execution or enforcement of a judgment or order;

(6) A requestor, pursuant to an order of any court;

(7) An insurer or insurance support organization;

(8) A licensed private investigative agency or licensed security service, for purposes permitted by 47 O.S. § 1109(A);

(9) A governmental or law enforcement agency, or a court, for use in an official function;

(10) Any person compiling and publishing motor vehicle statistics, provided that names and addresses of individuals shall not be disclosed;

(11) Any motor vehicle manufacturer or an authorized representative thereof, in connection with matters of motor vehicle or driver safety and theft, motor vehicle emissions, motor vehicle product alterations, recalls or advisories, performance monitoring of motor vehicles, motor vehicle parts and dealers, motor vehicle market research activities, including survey research, and removal of non-owner records from the original owner records of motor vehicle manufacturers; or,

(12) For use in connection with the operation of private toll transportation facilities.

(13) For furnishing the name and address of all commercial entities who have current registrations of any particular model of vehicle; provided, this exception shall not allow the release of personal information pursuant to the provisions of the Driver's Privacy Protection Act, 18 U.S.C. §§ 2721 through 2725.

(c) **Insurance information release.** Insurance information, including insurer and policy number, may be released to a law enforcement officer investigating an accident pursuant to 47 O.S. § 10-104, or to a licensed Oklahoma wrecker service, when that information is needed to establish responsibility for wrecker fees.

(d) **Penalties for the release of prohibited information.** The release of any information not specifically authorized by statute, as described in subsections (b) and (c) of this Section, is strictly prohibited, and may be subject to penalties enumerated in 47 O.S. § 1109(H).

(e) **Penalties pursuant to the Drivers Privacy Protection Act.** In addition to penalties provided under state law, certain provisions of federal law, under the Drivers Privacy Protection Act, may apply.

(1) Any person who violates the Drivers Privacy Protection Act (DPPA) is subject to criminal prosecution as provided in 18 U.S.C.A. § 2721, et seq.

(2) Any person who violates the Drivers Privacy Protection Act (DPPA) is subject to civil penalties of actual damages not less than $2,500.00; punitive damages, reasonable attorneys' fees, litigation costs, and such other relief the court determines to be appropriate.

(3) Any state agency violating the Drivers Privacy Protection Act (DPPA) is subject to a civil penalty of not more than $5,000.00 for each day of substantial noncompliance.

(f) **Types of information released.** The form, formats, media, and sources of information provided under this Section may be available for a statutorily provided fee:

(1) Current ownership or lienholder information may be provided to qualified requestors by the Oklahoma Tax Commission and motor license agents.

(2) Computer-generated title history information may be provided by the Oklahoma Tax Commission.

(3) ~~Microfilm~~Archived title history information may be provided by the Oklahoma Tax Commission.

(4) Certified microfilm title history may be provided by the Oklahoma Tax Commission.

(5) Upon presentation of a completed Vehicle Information Request Form and remittance of the applicable fee, a duplicate transaction receipt may be generated and provided to the owner of record reflected on the transaction by the Oklahoma Tax Commission or a motor license agent.

(g) **Certain information release to motor license agents.** When required in the performance of their duties, motor license agents may request and receive from the Motor Vehicle Division copies of submitted documentation relating to a transaction performed at their agency at no charge. A motor license agent may not assess any fee to a taxpayer for acquiring and/or providing to the taxpayer any such documentation provided

at no charge to the motor license agent by the Division. A motor license agent requesting copies of documentation from a transaction completed at another motor license agency is to be assessed the research fee provided for by 47 O.S. § 1109(B). In that event, the actual cost assessed the agent by the Division may be passed on to the requesting taxpayer. The agent may not assess any additional fee for that record research and/or retrieval service.

(h) **Motor license agent access to vehicle records.** Motor license agents are prohibited from accessing and/or disclosing any vehicle ownership or lienholder information contained within the computer files or other records of the Oklahoma Tax Commission, except as required in the course of performing their designated duties. Any unwarranted access to and/or disclosure of such confidential information shall be considered a breach of state and federal statutory confidentiality restrictions, enumerated above, and shall constitute grounds for revocation of the motor license agent's appointment.

SUBCHAPTER 3. REGISTRATION AND LICENSING

PART 1. GENERAL PROVISIONS

710:60-3-23. Tornado registration fee credit

Credit will be allowed towards the Oklahoma registration fee of a vehicle which is a replacement for a properly registered vehicle destroyed by a tornado ~~on October 9, 2001, or May 8 or 9, 2003, or destroyed by a tornado~~ in 2013, or any subsequent year, for which a Presidential Major Disaster Declaration was issued. Credit will be allowed on a vehicle which is a replacement for a vehicle destroyed by tornado in calendar years 2012 and 2013 for which no Presidential Major Disaster Declaration was issued. The credit will be prorated to an amount equal to the fee for the number of months remaining on the registration for the destroyed vehicle, as of the date of loss. No excess credit may be refunded. Proof of loss of the destroyed vehicle must ordinarily be provided by the registrant, i.e., a letter or other documentation from the insurance company, identifying the vehicle and confirming its loss. If such documentation is unavailable, the Motor Vehicle Division may be contacted for consideration of an alternative or exception to the documentary requirement.

PART 3. PENALTIES

710:60-3-32. Used vehicle brought ~~in by owner moving~~ to Oklahoma from another titling jurisdiction

(a) **Used vehicle brought in by owner moving to Oklahoma.** When the owner of a vehicle becomes employed in this state, the vehicle is deemed to be subject to tax in this state and, within thirty (30) days from the date of employment, shall be registered in this state upon the same terms and conditions that resident owners are required to register such vehicles in this state. However, the owner of a vehicle who is employed in this state and commutes daily from an adjoining state shall be exempt from the provisions in this section. The penalty for failure to register the vehicle in the manner provided shall be an amount equal to the registration fee less the administrative fee.

(b) **Out-of-state or Indian tribal documentation reflecting Oklahoma address.** When an out-of-state or federally-recognized Indian tribal title or registration is presented in application for an Oklahoma title by an owner whose name(s) is (are) reflected on that document~~out-of-state title or registration~~ with an Oklahoma address, proof of former residency in that other state, or membership in that tribe, will~~may~~ be required~~. If a title issued by a federally recognized Indian Tribe is presented, proof of membership in the issuing tribe will be required.~~ No such proof will be required if the out-of-state or tribal title has been assigned to another party. When required, if ~~If~~ out-of-state residency/tribal membership cannot be verified, delinquent registration fees and penalties will be assessed, based on the issuance date of the out-of-state or tribal documentation.

(1) Examples of out-of-state residency verification: Out-of-state driver license; Voter registration card; Tax return (property or income); Utility bills in the name of the vehicle owner.

(2) Examples of Indian Tribal membership verification: Identification card or certificate of tribal membership issued by tribe; Bureau of Indian Affairs (BIA) identification card; Letter from tribe verifying membership; Branded membership statement on the tribal title, verifying tribal membership of the listed owner(s).

~~(c) The penalty for failure to register the vehicle in the manner provided shall be an amount equal to the registration fee less the administrative fee.~~

PART 11. OTHER VEHICLES

710:60-3-111. Miscellaneous vehicles; definitions

(a) **Farm trucks. "Farm truck"** means pickup, truck, or truck tractor used primarily for agricultural purposes. For purposes of farm truck registration eligibility **"pickup" means a small, light truck with an open back or box used for hauling and designed primarily for the carrying of property, rather than people and "truck" means a motor vehicle designed or converted primarily for carrying or hauling farm commodities, property, livestock, or equipment, rather than people.** To qualify for farm truck registration, the applicant must provide either a copy of Schedule F (or comparable form) of the previous year's Federal Income Tax Return, or an agricultural exemption permit (SMX number) assigned by the Oklahoma Tax Commission. The permit must be in the name of the vehicle owner, with the following exceptions: An agriculture exemption permit may be utilized by any family member or employee of the permit holder, who uses his/her vehicle primarily for agricultural purposes on behalf of the permit holder to qualify for farm truck registration. If the permit holder is not reflected as a vehicle owner on the title

record, a statement from the permit holder that the vehicle is utilized primarily for agricultural purposes on the permit holder's behalf is to be submitted. Any person registering a farm truck, other than a pickup, must also complete and submit a "Declaration of Gross Vehicle Weight for Vehicle Registered with a Farm Tag" (OTC Form 786). If a laden weight of 55,000 pounds or more is listed, the owner must provide I.R.S. Form 2290 and a Schedule 1.

(b) **Farm trailers.** Farm trailers are not required to be registered. An optional farm trailer tag is available. ~~These tags are for registration purposes only and a title may not be issued for them~~. This is an optional registration only transaction and no certificate of title may be issued. If a serial number is stamped on the trailer, it will be used for the vehicle identification number (VIN)~~VIN~~ on the registration record. Otherwise, the driver license number of the owner will be utilized.~~used. A monthly and yearly decals will be issued to~~The registration will expire one year from date of ~~registration~~issuance. As registration is optional, no delinquent registration fees or penalties are to be assessed. Upon initial issuance of a farm trailer tag, the applicant will be required to complete a Registration Application form, affirming their ownership of the trailer and providing copies of available acquisition documentation.

(c) **Buses.** Buses are classified as either Inter-City or Intra-City. The Inter-City buses operate between different cities. The Intra-City buses operate within a given city. The rates for such vehicles are based on the seating capacity. All buses in these classifications must be licensed by the Oklahoma Corporation Commission.

(d) **Private school buses.** Private school buses are those privately owned buses used exclusively to transport school children.

(e) **Taxicabs.** Taxicabs are motor vehicles for hire, designed to carry ten (10) persons or less, operated upon any street or highway, or on call or demand, accepting or soliciting passengers indiscriminately for transportation for hire between such points along streets or highways as may be directed by the passenger or passengers so being transported. In order to register as a taxicab, the owner shall be required to validate proper taxicab operating authority. Validation shall normally constitute presentation of a photocopy of the license issued by the applicable municipality in which the taxicab operates, or a photocopy of the For Hire Carrier License issued by the Oklahoma Corporation Commission.

(f) **Rental vehicles.** Rental vehicles are vehicles acquired by rental companies not to be rented for more than ninety (90) days at a time. Rental passenger vehicles and light trucks (pickups, vans, sport utility vehicles) are entitled to special registration fees as set forth by statute. Larger trucks utilized in a rental capacity are to be registered commercially.

(g) **Private trailers.** Private trailers are not required to be registered. An optional private trailer registration and license plate is available to owners of noncommercial boat and utility type trailers not being utilized in a commercial capacity. ~~The fee is established by statute~~. This is an optional registration only transaction and no certificate of title may be issued. If a serial number is stamped on the trailer, it will be used for the vehicle identification number (VIN) on the registration record. Otherwise, the driver license number of the owner will be utilized. ~~A monthly and yearly decal will be issued to expire~~The registration will expire one year from date of ~~registration~~issuance. As registration is optional, no delinquent registration fees or penalties are to be assessed. Upon initial issuance of a private trailer tag, the applicant will be required to complete a Registration Application form, affirming their ownership of the trailer and providing copies of available acquisition documentation.

(h) **Mini-truck. "Mini-truck"** means a foreign-manufactured import or domestic-manufactured vehicle powered by an internal combustion engine with a piston or rotor displacement of one thousand cubic centimeters (1,000 cu cm) or less, which is sixty-seven (67) inches or less in width, with an unladen dry weight of three thousand four hundred (3,400) pounds or less, traveling on four or more tires, having a top speed of approximately fifty-five (55) miles per hour, equipped with a bed or compartment for hauling, and having an enclosed passenger cab. Any vehicle meeting that description is required to be titled and registered, as of November 1, 2008. Excise tax is not assessed on mini-trucks purchased prior to November 1, 2008.

(i) **Registration and titling guidelines.** Mini-trucks may be registered in the same manner and under the same classification guidelines as any other light truck. Mini-trucks are subject to the same titling and lien filing guidelines as other light trucks, with the exception of required documentation at time of initial titling. Those general titling documentary guidelines are as follows:

(A) **New mini-trucks purchased on or after November 1, 2008.** A properly assigned Manufacturer's Statement of Origin (MSO) and dealer's invoice (to establish purchase price) is required to apply for an Oklahoma title.

(B) **All other mini-trucks.** A properly assigned certificate of title or Manufacturer's Statement of Origin (MSO) is to be submitted, if available. If not available, the Commission may accept a notarized bill of sale, or other similar ownership instrument, as an alternative.

PART 14. ALL-TERRAIN VEHICLES, OFF-ROAD MOTORCYCLES AND UTILITY VEHICLES

710:60-3-140. All-terrain vehicles, off-road motorcycles and utility vehicles

(a) **Title and registration requirement.** All-terrain vehicles (ATV's) and off-road motorcycles (ORM's) purchased, or on which ownership is transferred, on or after July 1, 2005 are required to be titled and registered, unless statutorily exempted. Utility vehicles purchased, or on which ownership is transferred, on or after July 1, 2008 are required to be titled and registered, unless statutorily exempted.

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

(1) **All-Terrain Vehicles (ATV).** A vehicle manufactured and used exclusively for off-highway use, traveling

on four or more non-highway tires, and ~~having a seat designed to be straddled by the operator and handlebars for steering~~being fifty (50) inches or less in width.

(2) **Off-Road Motorcycles (ORM).** A motorcycle manufactured for and used exclusively off roads, highways, and any other paved surfaces. Small street or sidewalk mini-motorcycles or scooters are not included in this category.

(3) **Utility Vehicle.** A vehicle powered by an internal combustion engine, manufactured and used exclusively for off-highway use, equipped with seating for two or more people and a steering wheel, traveling on four or more wheels.

PART 15. SPECIAL LICENSE PLATES

710:60-3-168. Indian tribal license plates

(a) **~~Qualification; application; renewal~~State of Oklahoma Indian tribal government license plates.** Vehicles titled in the name of a federally recognized Indian tribe only and used exclusively for the furtherance of its tribal functions~~that tribe~~, may be issued State of Oklahoma Indian tribal ~~tags~~ government license plates, or tribal compact license plates, pursuant to subsection (b). Initial applications for ~~such~~State of Oklahoma tribal license plates are made directly to the Oklahoma Tax Commission. Application for registration renewal of ~~Indian tribal license~~such plates may be made to the Oklahoma Tax Commission, or a motor license agent. Insurance verification, or a properly completed affidavit of non-use, is required at time of application.

(~~b~~1) **Retention of ~~tag~~license plate by tribe; transfer to replacement vehicle.** When a vehicle with a State of Oklahoma tribal ~~tag~~license plate is sold, the tribe ~~retains~~may retain the ~~special tag~~plate for transferal to the replacement vehicle. ~~The tag may be transferred to the replacement vehicle~~. The ~~tag~~plate cannot be transferred to another tribe.

(~~c~~2) **Procedure upon sale to a non-qualifying purchaser.** When ownership of a vehicle is ~~sold by~~transferred from a tribe to a ~~purchaser~~new owner not qualifying for the reduced rate, the purchaser must register the vehicle from the date of sale at the applicable fee and obtain ~~a standard~~the appropriate replacement license plate.

(b) **Indian tribal compact license plates.** Pursuant to a signed compact between a tribe and the State of Oklahoma, special tribal license plates may be designed and offered for issuance to tribal members, or the tribal government, at Oklahoma motor license agencies. Associated taxes and fees will be assessed and distributed pursuant to the provisions of the applicable compact.

(1) **Tribal membership of individual required.** Proof of membership in the tribe must be presented at time of registration by an individual member. The tribal member must be reflected on the Oklahoma certificate of title as an owner of the vehicle.

(2) **Tribal government registration.** Motor vehicles owned and operated by the tribe for governmental purposes are eligible for Indian tribal compact plates. The tribal government must be reflected as owner on the Oklahoma certificate of title. The registration fee applicable to Indian tribal license plates pursuant to the provisions of 47 O.S. § 1135.1(B)(4) will be assessed.

(3) **Procedure upon sale by an individual member to a non-tribal purchaser.** When a vehicle registered to an individual tribal member is transferred to a non-tribal member, the purchaser must obtain a replacement license plate when transferring ownership into his or her name.

(4) **Procedure upon sale by tribal government.** When a vehicle registered to the tribal government is transferred from the tribe to a new owner not qualifying for the reduced tribal government rate, the purchaser must register the vehicle from the date of sale at the applicable fee and obtain the appropriate replacement license plate. The tribe may retain the special tag for transferal to the replacement vehicle. The tag cannot be transferred to another tribe.

(5) **Registration information provided to tribe.** Tribal member registration information will be provided by the Commission to the tribe, pursuant to the compact provisions.

SUBCHAPTER 5. MOTOR VEHICLE TITLES

PART 5. CERTIFICATES OF TITLE

710:60-5-51. Original certificate of title

(a) **Completed application required.** An application for Oklahoma Certificate of Title (form 701-6), must be completed and forwarded to the Commission upon application for an original Oklahoma title.

(b) **Manufacturer's statement of origin.** A Manufacturer's Statement of Origin (MSO) must accompany the title to a vehicle which has never been titled or registered. If no MSO has yet been provided to the owner at time of initial title application, an original Oklahoma title may be placed on document hold upon presentation of ownership documentation acceptable to the Commission, such as a completed contract of sale from the selling dealership.

(c) **Out-of-state titles; negotiable titles; memorandum titles.** When issuing an original title from an out-of-state title to the individual whose name appears on the face, all information must be correctly transcribed from the out-of-state title. When presented with any document other than a negotiable out-of-state title, the Oklahoma Title will be placed on document hold and not be released until the negotiable out-of-state title is surrendered. When the Oklahoma title is to be placed on document hold, the applicant is to be asked whether the vehicle is subject to any lien and, if so, is to complete an affidavit outlining the lienholder information. When an out-of-state title is submitted reflecting a secured party, the lien will be carried forward to the Oklahoma record, as outlined in OAC 710:60-5-113. If the negotiable out-of-state title is being held by the secured party, the owner of the vehicle shall file an affidavit with the Commission or the motor license agent stating

that title to the vehicle is being held by a secured party and has not been issued pursuant to the laws of the state where titled, and that there is an existing lien or encumbrance on the vehicle. The current name and address of the secured party or lienholder shall also be stated in the affidavit. The form of the affidavit shall be prescribed by the Oklahoma Tax Commission. In most instances, negotiable titles are those containing ownership assignment sections. Lack of assignments ordinarily indicates the title is non-negotiable.

(d) **Assigned or reassigned out-of-state titles.** An out-of-state title which has been properly assigned or reassigned ~~on the reverse with an out-of-state notary~~ is acceptable ~~and~~ownership documentation to qualify for issuance of an original Oklahoma title ~~will be issued~~. Notarization is required on any assignment completed in a state that requires such notarization.

(e) **Title issued only to assignee.** Under no circumstances shall an Oklahoma Certificate of Title be issued to an ~~individual~~individual(s) or entity other than to whom the assignment is made.

(f) **Actual sales price.** The actual sales price, commonly referred to as "purchase price", is required for any vehicle on which an Oklahoma title is to be issued and excise tax collected. The documentation described in this subsection is required to establish the actual sales price:

(1) For new vehicles, a purchase contract or bill of sale from the selling dealer will be required.

(2) For used vehicles, a purchase price reflected in the ownership assignment area of those title certificates which provide an area for that information, or a purchase contract, or bill of sale will be required. If none of those documents are available, a "Declaration of Vehicle Purchase Price" (OTC Form 722-1) must be completed by the purchaser.

(3) A purchase contract or bill of sale offered only to establish the actual sales price pursuant to this subsection, and not to convey ownership, need not be notarized.

(g) **IRP registration title hold.** When an applicant for an original Oklahoma title does not complete a registration transaction at that time, due to a declaration of intent to subsequently register the vehicle under the International Registration Plan (IRP), the Oklahoma title will be placed on hold until that registration transaction is completed and confirmed.

710:60-5-66. Stolen vehicle notification

Pending title transactions will be checked against a national stolen vehicle database, such as NCIC or NICB, for the presence of a stolen vehicle record. If a stolen vehicle report is on file, the appropriate law enforcement agency will be contacted and the title transaction placed on hold, pending that agency's response. If no response is received within the time period established by the Commission, the title transaction hold will be released.

PART 7. TRANSFER OF TITLE

710:60-5-71. General provisions; assignments; liens; registration; notice of transfer

(a) **Transfer of title.** In most instances, an Oklahoma transfer title is issued upon receipt of a properly assigned and notarized Oklahoma title and proof of liability insurance. Assignments of Oklahoma certificates of title to, or by, out of state dealers located in non-notary states are not required to be notarized. Other instances where a transfer title may be issued are covered in the following subsections.

(b) **Use of assignment space provided on title document.** The first assignment space on an Oklahoma title is to be used by the owner on the face of the title to assign ownership. The subsequent reassignment spaces may be used by appropriately licensed Oklahoma dealers only. Should an assigned Oklahoma certificate of title be presented in application for an Oklahoma title and that certificate reflects a previous ownership assignment that was never completed via issuance of an Oklahoma title, the Motor Vehicle Division may approve a certificate of title to be issued directly to the most recent assignee; provided both assignments are properly completed and all taxes, fees and delinquent penalties due in regard to the previous assignment are collected, in addition to those due on the most recent assignment.

(c) **Liens transfer.** Any active liens indicated on the face of an assigned Oklahoma title will be carried forward to the transfer title being issued unless a lien release is presented.

(d) **Current registration required; exceptions.** Registration must be current on a vehicle before a transfer title may be issued, unless the vehicle is in a salvage or junked status. Licensed used motor vehicle dealers are exempt from this requirement when transferring to other licensed dealers, provided the vehicle was currently registered, or in the registration expiration grace month, when it was assigned to the first dealer. Salvage dealers are exempt from registration requirements when obtaining salvage or junked titles.

(e) **Actual sales price documentation.** The actual sales price is required for any vehicle on which an Oklahoma title is to be issued and excise tax collected. The actual sales price is commonly referred to as the "purchase price". One of the following documents is required to establish the actual sales price:

(1) A purchase contract;

(2) A bill of sale;

(3) A "Declaration of Vehicle Purchase Price" (OTC Form 722-1); or

(4) Oklahoma title certificate, with a purchase price entry listing where indicated;

(5) A purchase contract or bill of sale offered only to establish purchase price pursuant to this subsection, and not to convey ownership, need not be notarized.

(f) **Notice of Transfer of Ownership of a Vehicle.** The seller or buyer of a motor vehicle may file a Notice of Transfer of Ownership of a Vehicle (OTC Form 773) to record the assignment of ownership in the Oklahoma Tax Commission Motor Vehicle Division computer system. The filing of Notices of Transfer is optional. The filing of the Notice of Transfer does not constitute a transfer of ownership and does not alleviate the buyer/new owner of the responsibility of

properly and timely transferring title and paying all applicable taxes and fees. To be acceptable, notices must be submitted containing all required information. Incomplete forms will not be filed. There are two (2) acceptable types of notice:

(1) Seller or buyers may submit a **Notice of Transfer of Ownership of a Vehicle (OTC form 733)** and the appropriate statutory filing fee to the Oklahoma Tax Commission or a motor license agent.

(2) Effective January 2006, a removable tear-off tab, **Oklahoma Certificate of Title Tear-Off Notice of Transfer Tab,** was incorporated on Oklahoma vehicle title certificates. This tab, properly completed, is to be accepted and processed in the same manner as the Notice of Transfer of Ownership of a Vehicle Form (OTC form 733).

710:60-5-74. Odometer brands

(a) **Types of odometer brands.** There are four (4) brands utilized on the face of a title to characterize the odometer reading. They are as follows:

(1) Actual
(2) Not Actual
(3) Exceeds mechanical limits, and
(4) Odometer discrepancy

(b) **Use of odometer brands.** The odometer discrepancy is to be used if the mileage figure verified in the odometer disclosure statement is less than the mileage depicted on the title to be transferred. When utilized, this brand will be in addition to whatever brand results from the odometer disclosure statement (actual, not actual, exceeds mechanical limits). For example, if the buyer and seller indicate on the odometer disclosure statement that the mileage listed on it is the actual mileage of the vehicle, even though the figure listed on the disclosure statement is less than that depicted on the assigned title, the brand of "Actual" will be listed on the face of the new title. However, in that situation, it is the responsibility of the motor license agent to also encode the additional brand of "Odometer Discrepancy." The resulting title would have both odometer brands, "Actual" and "Odometer Discrepancy" listed on it.

(c) **Vehicle inspection considered disclosure.** The inspection required in Title 47 O.S. § 1105(L) shall be considered a disclosure statement for the purpose of employing the "Odometer Discrepancy" brand on vehicles less than ten (10) model years old. If the inspected mileage is less than that depicted on the face of the surrendered out-of-state title, the brand "Odometer Discrepancy" is to be listed on the face of the Oklahoma title issued.

(d) **Odometer brands on vehicles entering from another state.** When a motor vehicle enters from another state and the surrendered title reflects an odometer brand of Not Actual; Exceeds Mechanical Limits; or Odometer Discrepancy, such brand is to be carried forward to the Oklahoma title record. When a vehicle enters from another state with no change of ownership and an odometer brand of Actual, no odometer brand is to be carried to the Oklahoma title record, unlessthe Odometer Discrepancy provisions described in subsection (c) apply.

710:60-5-75. General odometer disclosure information

(a) Eventually, virtually all certificates of title issued in the United States will contain the required odometer disclosure statements. However, separate statements will remain in use for quite some time, as older style titles will remain in circulation.

(b) All Oklahoma certificates of title, with the exception of boat or motor and junked titles, issued on or after January 1, 1990, contain the odometer disclosure statements as part of the assignment on the reverse side of the certificate.

(c) A separate odometer disclosure statement, properly completed and signed by both buyer and seller, may be used to correct an error made on the odometer statements on the title itself upon approval by the Oklahoma Tax Commission.

(d) On titles containing odometer disclosure statements, only the sellers name must be witnessed by the notary public.

(e) **Odometer figure entry on motor vehicles entering from another state.** When a motor vehicle enters from another state reflecting an ownership change, the mileage from the accompanying odometer disclosure is to be entered to the Oklahoma title record. When a motor vehicle enters from another state with no change of ownership, the odometer reading from the inspection performed pursuant to 47 O.S. § 1105 is to be entered to the Oklahoma title record.

PART 11. LIENS

710:60-5-111. Perfecting liens

(a) **Documents required for perfecting lien.** To perfect a lien, either an Oklahoma title, or an Application for Oklahoma Title accompanying a Manufacturer's Statement of Origin or out-of-state ownership document, must be presented, along with a completed Lien Entry Form.

(b) **Lien form must be legible.** To be acceptable, all lien entry forms must be clearly legible, as determined by the Tax Commission.

(c) **Secured party information.** The secured party must have completed his part of the form, particularly the signature and date of execution. Strikeovers and off line printing are not acceptable.

(d) **Title to conform to lien entry form.** The name of the secured party will be entered on the face of the secured title exactly as it appears on the lien entry form.

(e) **Title receipt reflecting lien to be issued; fees.** When recording a lien on a registered vehicle, boat or motor used as collateral, a title must be issued to reflect the lien. A title fee, in addition to the lien fee, will be assessed.

(f) **Reassignment of lien.** A secured party may file a reassignment of a lien to another secured party by submitting to the Oklahoma Tax Commission Motor Vehicle Division a release of the initial lien, as well as a lien entry form and filing fees for the lien reassignment. The lien entry form is to state it is a reassignment of an existing lien. Upon receipt of proper documentation and payment, the Motor Vehicle Division will enter the new lien information to the vehicle record, reflecting the same effective date ~~and time~~ as the initial lien.

(g) **Certain liens not perfectible under Motor Vehicle Code.** Lien entry forms cannot be accepted on any vehicle that cannot be issued an Oklahoma Certificate of Title. As an example, farm tractors or mobilized farm machinery cannot be issued a title. A lien cannot be perfected under the Motor Vehicle Code because a title will never be issued.

710:60-5-115. Recording liens on certificates of title

(a) **Lien perfected with M.S.O.** When an M.S.O. is presented reflecting a lien entry stamp, the lien noted on the assignment of the M.S.O. or the lien entry form, will be reflected on the title issued. ~~The title must reflect the date and time on the lien entry stamp.~~

(b) **Oklahoma Title on which a lien has been entered.** When presented with an Oklahoma Title on which a lien entry stamp appears, the lien information from the back of the title or the Lien Entry Form will be transferred to the title issued.

(c) **Generally, lien information is reflected on the face of the transferred title.** When transferring an assigned Oklahoma Certificate of Title with a lien on the face of the assigned title, the lien information must be reflected on the face of the transferred title issued, unless a lien release is received.

(d) **Lien perfected from Indian Tribal Certificate of Title.** A security interest in a vehicle registered by a federally-recognized Indian tribe shall be deemed valid under Oklahoma law if validly perfected under the applicable tribal law, and the lien is noted on the face of the tribal certificate of title.

710:60-5-116. Possessory liens under Title 42 of the Oklahoma Statutes

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

(1) **"Business day"** means a day on which State offices are open for regular business.

(2) **"Commission"** means the Oklahoma Tax Commission.

(3) **"Division"** means the Motor Vehicle Division of the Oklahoma Tax Commission.

(4) **"Itemized charges"** means total parts, total labor, total towing fees, total storage fees, total processing fees and totals of any other fee groups, the sum total of which shall equal the compensation claimed.

(5) **"Lawfully in possession"** means a person has documentation from the owner or the owner's authorized agent, or an insurance company or its authorized agent, authorizing the furnishing of material, labor or storage, or that the property was authorized to be towed to a repair facility.

(6) **"Property"** means any vehicle, trailer, manufactured home, boat or outboard motor subject to the lien process described herein.

(7) **"Salvage pool"** means any person or business which regularly conducts a salvage disposal sale.

(b) **~~Prior approval required~~Application review and approval.** Any person who wishes to claim a possessory lien and sell ~~a vehicle~~property for storage fees or work done for which they have not been compensated must comply with the applicable lien filing provisions of Title 42 of the Oklahoma Statutes and submit proper documentation to the ~~Tax~~ Commission for review and title issuance approval. As part of the ~~approval~~ review process, the record will be checked against a national stolen vehicle database, such as NCIC or NICB,~~files~~ for the presence of a stolen ~~vehicle~~property record. If a stolen ~~vehicle~~property report is on file, the application will be denied and the filer advised of the law enforcement agency responsible for the ~~NCIC~~ report.

(~~b~~c) **Forms and instructions available.** A packet of instructions and required forms may be obtained from the ~~Motor Vehicle~~ Division ~~of the Tax Commission~~ or online at ~~www.ok-tax.state.ok.us~~ www.tax.ok.gov. There are two (2) types of possessory lien filings applicable to ~~vehicles~~property under Title 42 of the Oklahoma Statutes:

(1) **Process One.** ~~One process applies~~Filings pursuant to 42 O.S. § 91, commonly referred to by the Division as Process One, applyto ~~vehicles, all-terrain vehicles, off-road motorcycles, manufactured homes, commercial trailers, boats and outboard motors~~property titled in the State of Oklahoma, or with a federally recognized Indian tribe, and on which an active lien is recorded and for which the lien filers are not ~~either licensed Class AA Wrecker Services or Salvage Pools, as defined in 47 O.S. § 591.2~~. excluded pursuant to 42 O.S. § 91 (A)(1)(b). Excepting manufactured homes, if an active lien is present, but is over fifteen (15) years old, the provisions of ~~#2 below~~42 O.S. § 91A apply.

(2) **Process Two.** ~~One process applies~~Filings pursuant to42 O.S. § 91A, commonly referred to by the Division as Process Two, apply to ~~vehicles, all-terrain vehicles, off-road motorcycles, manufactured homes, commercial trailers, boats and outboard motors~~property titled in another state, or which do not have a certificate of title or have a certificate of title on which an active lien is not recorded, or are excluded by 42 O.S. § 91(D) from the process described ~~under #1~~in paragraph (1) of subsection (c)~~above by 42 O.S. § 91(D)~~, or on which the lien is filed by either a licensed Class AA Wrecker Service, unless the action results from a consensual tow, or a Salvage Pool, as defined in 47 O.S. § 591.2.

(~~c~~d) **Procedure for completion and submission of required forms.** Incomplete or altered forms will not be accepted. The forms ~~will~~ provide the applicant with ~~a~~ designated ~~area~~areas in which to enter ~~any desired identifying~~required information.

(~~d~~e) **Persons qualified to file possessory liens.** Every person who, while lawfully in possession of an article of personal property, renders any service to the owner thereof by furnishing material, labor or skill for the protection, improvement, safekeeping, towing, storage or carriage thereof, has a special lien thereon, dependent on possession, for the compensation, if any, which is due such person from the owner for such service. Written proof of authority to perform the work, labor or service, or, when applicable, claimant's statement that the property was abandoned by the owner, is required.

(~~e~~f) **Manner of foreclosure.** Said lien may be foreclosed by a sale of such personal property, following proper notification to the record owner and all interested parties.

(~~f~~g) **Notice requirements.**

(1) **General requirements.** The ~~type and extent~~content and filing timeframes of ~~the~~ required notices are outlined by statute. ~~and depend upon the status of the vehicle and the lien claimant.All require notification~~Notification of the record owner and all interested parties, when ascertainable, is always required.~~All require the completion~~Completion and proper posting of a Notice of Sale (OTC 752-A) is required.~~although some specific information on the Notice is not required under all lien filing situations. Certain situations also require the filing of a Notice of Possessory Lien (OTC 752-D).~~With the specific exception of salvage pools, most lien filers must complete and send a Notice of Possessory Lien (OTC 752-D) to all interested parties.

(2) **Contact information.** All notices to interested parties must include complete and accurate contact information for the clamant, as specified by statute.

(3) **Certified mailing requirements.** All written notifications to interested parties must be sent via certified mail, return receipt requested. Either the returned receipt, or the postal service approved electronic equivalent of proof of return receipt requested, shall be required when submitting for title issuance approval.

(4) **Itemization of charges.** An itemized listing of all charges, as defined by statute, equaling the total compensation claim, is required.

(5) **Photograph.** All filings pursuant to 42 O.S. § 91 must include a photograph of the property. Filings pursuant to 42 O.S. § 91A for motor vehicles must include a photograph of said motor vehicle. For other property, filings pursuant to 42 O.S. § 91A must contain:

(A) Written confirmation of a visual inspection of the property completed by the filer, verifying the identification number or serial number assigned the property and the general condition of such property, or

(B) Photograph of the property.

(~~2~~6) **Ownership/Lienholder determination for notification purposes.** Within the timeframes prescribed by statute, the lien claimant must attempt to ascertain ~~Record~~record ownership of the property and the existence of any lienholders on file with the ~~Oklahoma Tax Commission/Motor Vehicle~~ Division, or the equivalent office in another jurisdiction.~~state, may be established as follows:~~

(A) If the property has an Oklahoma ~~tag number~~license plate, registration decal, boat registration number, or is otherwise believed to have been registered in this state, the Commission or any Oklahoma tag agency ~~may~~shall be contacted for ownership/lienholder information. Provided the information is available in the computer file, the ~~filer~~claimant will be asked to complete a Vehicle Information Request (OTC Form 769) and pay the applicable fee. The Commission or tag agency will provide the requested Oklahoma computer file ownership/lienholder information within ten (10) business days of receiving the request.

(B) If there is no current ownership/lienholder record on file, a Vehicle Information Request (Form OTC 769), requesting a title search for the last record owner is to be completed and submitted to the Oklahoma Tax Commission/Motor Vehicle Division Title Research Section, along with the applicable fee.

(C) If the Research Section has no record on file and the property is over five (5) years old, or over fifteen (15) years old if a manufactured home, the claimant will be advised that the interested party notice may be accomplished by publication. Refer to **Notice when owner is unknown.**

(D) If the property ~~is from~~was most recently titled and/or registeredin another state or with an Indian Tribe, the appropriate registering authority~~Motor Vehicle Department~~ of that state or tribe must be contacted for ownership/lienholder information. Letters or computer ~~file~~record printouts from ~~other states'~~the applicable state or tribe~~Motor Vehicle Departments~~ providing ~~that~~owner and lienholder information are acceptable. ~~Teletype printouts from law enforcement agencies are not acceptable~~. Ownership/lienholder information provided by entities other than the appropriate registering authority may be acceptable, provided the accuracy of the information may be verified by the Division.

(E) When no Oklahoma record is on file, the jurisdiction of titling is unknown and the property, unless a manufactured home, is five (5) model years or newer, or, if a manufactured home, is fifteen (15) model years or newer, the claimant or their agent shall request, in writing, that the ~~Oklahoma Tax Commission Motor Vehicle~~ Division ascertain the jurisdiction of titling. Within fourteen (14) days of receipt of the request, the Division will provide either the titling jurisdiction, or notice that no determination was made. If a titling jurisdiction is determined, the claimant must contact that state's ~~Motor Vehicle Division, or equivalent~~, titling authority for ownership and lienholder information. If no titling jurisdiction determination is made, as confirmed by the Division, notice by publication is required.

(F) When no Oklahoma record is on file, the jurisdiction of titling is unknown and the vehicle/ATV/commercial trailer boat or motor is over five (5) model years old, or manufactured home is over fifteen (15) model years old, notice by publication is required.

(~~3~~7) **Notice when owner is unknown.** In the event all applicable ownership/lienholder determination procedures have been followed and resulted in no record found, notice by publication in an authorized newspaper must be performed as follows:

(A) The newspaper must be authorized to publish legal notices pursuant to the provisions of 25 O.S. §

106 and must be published in the county in which the ~~vehicle~~property is located. If no newspaper authorized by law to publish legal notices is published in that county, the notice is to be published in some such newspaper of general circulation which is published in an adjoining county. Eligible newspapers may be verified by contacting the ~~Oklahoma Tax Commission Motor Vehicle~~ Division.

(B) The newspaper notice must identify the ~~vehicle~~property by identification number, year, and make.

(C) The notice must include the name of an individual who may be contacted in reference to the sale, including their telephone number or the address where the property is located.

(D) The notice must run at least (1) day per week for (3) consecutive weeks. The first date available for public sale of the property is the day following publication of the final notice, but no fewer than thirty (30) days after the lien has accrued.

(E) Upon completion of the newspaper notification process, an Affidavit of Publication (OTC Form 752-E) must be completed and included with the Title 42 documentation submitted to the ~~Oklahoma Tax Commission / Motor Vehicle~~ Division.

(~~g~~h) **Sale and distribution of proceeds of sale.** When the ~~vehicle~~property is sold, the special (possessory) lien holder, upon satisfying the amounts due to him/her must make arrangements for the payment in excess of the amounts due to him to be paid to the secured party or parties and to the owner of the ~~vehicle~~ property.

(~~h~~i) **Effect of foreclosure on purchaser's title.** The purchaser of the ~~vehicle~~property will receive a Certificate of Title without any liens indicated. [**See:** 42 O.S. § 91 et seq.]

(~~i~~j) **Abandoned ~~vehicle~~property auction.** Any ~~vehicle~~property offered at an abandoned ~~vehicle~~ property auction performed by a Class AA wrecker service or lien claimant is exempt from all prior year registration fees, title fees, stop flag fees, and any other fees imposed by the state resulting from the prior ownership of the ~~vehicle~~property. However, if the purchaser is the registered owner of the ~~vehicle~~ property prior to towing, any outstanding prior years' fees will be due.

(k) **Failure to comply.** Failure by a lien filer to comply with any statutory filing requirements shall result in denial of the title application. Notification of denial will be returned to the filer by the Division via certified mail. The applicant is entitled to one (1) resubmission of the title application within fifteen (15) business days of the denial.

(l) **Notice of legal proceedings.** Upon receipt of a notice of legal proceedings, the Commission shall place a hold on the sale process until notice of resolution of the court proceedings is received.

SUBCHAPTER 7. MOTOR VEHICLE EXCISE TAX

710:60-7-3. Excise tax levy and exemptions

(a) **General levy on transfer of legal ownership.** Excise Tax is levied on every exchange of legal ownership on any vehicle registered or being registered in Oklahoma unless a specific tax exemption applies.

(b) **Exemptions.** Following is information on some of the more frequently encountered exempt situations:

(1) **Husband and wife; parent and child.** Only transfers made without consideration between husband and wife, parent and child, or vice versa, are exempt. A Family Affidavit (Form 794) must be included with the other supporting documentation and is to be attached to the Title documentation. This exemption does not apply to transfers between in laws or grandparents to grandchildren.

(2) **Out-of-state residence and registration; nonresident military.** Any vehicle brought into Oklahoma by a person formerly living in another state is exempt, if the person owned and registered the vehicle in such other state of his residence at least sixty (60) days prior to the time it is required to be registered in Oklahoma. Nonresident members of the Armed Forces stationed in Oklahoma may register their vehicle without excise tax if the vehicle has been registered by them in another state (60 day limit does not apply).

(3) **Governmental entities.** Any vehicle is exempt if registered by the State of Oklahoma or any political subdivision thereof. Additionally, vehicles leased by a county, municipality, or a school district are exempt from the excise tax.

(4) **Title by inheritance.** Any vehicle on which legal ownership was obtained by inheritance is exempt from the levy of the excise tax.

(5) **Certain transfers of corporations and partnerships.** Legal Ownership of vehicles obtained by transfer as set out in Section 2105(9) of Title 68 **may** also be exempt.

(6) **Moped.** A motorized bicycle (moped) is exempt if sales tax was paid.

(7) **Rural water districts.** A Rural Water District is exempt.

(8) **Rural electric cooperatives.** A Rural Electric Coop is exempt.

(9) **Federal reserve banks.** Federal Reserve Banks are exempt.

(10) **Vehicles registered under International Registration Plan.** Transfer of vehicles registered under the International Registration Plan between lessor and lessee at the termination of the lease are exempt from the excise tax.

(11) **Short term rentals by rental companies.** Vehicles acquired by rental companies not to be rented for terms of more than 90 days may be registered and titled by the rental agency exempt from excise tax. An Oklahoma title branded "Rental Vehicle" will be issued. If the vehicle is sold less than one (1) year from date of issuance of the title, the rental agency must pay the excise tax that would have been due on the vehicle, plus a 20% penalty before transferring the vehicle, unless the vehicle is being

transferred to the manufacturer or its financing company, to a franchised dealer of the same line/make of the vehicle to be transferred, or to anyone, if the vehicle is in a salvage condition (salvage or junk title).

(12) **Foreclosure of lien or mortgage; insurance contracts.** Any vehicle, the ownership of which was obtained by the lienholder or mortgagee under or by foreclosure of a lien or mortgage in the manner provided by law or to the insurer under subrogated rights arising by reason of loss under an insurance contract, is exempt from excise tax.

(13) **New vehicles registered by new car dealers.** A new vehicle registered by a new vehicle dealer is exempt for a period of four (4) months.

(14) **Insurance companies.** An insurance company may obtain title to a vehicle on which they paid a loss exempt from excise tax.

(15) **Revocable trusts.** Transfers made without consideration between an individual and an express trust which that individual or the spouse, child or parent of that individual has a right to revoke are exempt.

(16) **Limited liability companies.** A limited liability company is a combination of a corporate and a partnership business organization structure. Excise tax exemption applies to the following transfers:

(A) Transfers to the limited liability company if former owners are members of the limited liability company and the interest in the company is in proportion to interest in the vehicle prior to the transfer. A notarized bill of sale indicating such will be required as supporting documentation.

(B) Transfers of ownership from a limited liability company to members when a dissolution is made. A notarized affidavit indicating such is required.

(17) **Vehicle lease or lease-purchase agreements.** Transfers of ownership of a vehicle acquired by a lessee are exempt from excise tax, provided the vehicle excise tax was paid at the time of the initial lease or lease-purchase agreement and an Oklahoma title was issued.

(18) **Fire Protection Districts.** Vehicles acquired by a Fire Protection District are exempt from the levy of excise tax.

(19) **Exemption for disabled veterans in receipt of compensation at the one hundred percent rate.** Persons who have been honorably discharged from active service in any branch of the Armed Forces of the United States or Oklahoma National Guard, and who have been certified by the United States Department of Veterans Affairs, or its successor, to be in receipt of compensation at the one hundred percent (100%) rate for a permanent disability sustained through military action or accident or resulting from a disease contracted while in such service is exempt from vehicle excise tax for one (1) vehicle in a consecutive three (3) year period.

(A) To prove eligibility a disabled veteran must submit either an Oklahoma Tax Commission exemption card with the notation "Sales Tax Exemption:100% Disabled Veteran" or a letter from the United States Department of Veterans Affairs, its successor, or the Armed Forces of the United States, certifying that the veteran is receiving disability compensation at the 100% rate.

(B) In order to qualify for the exemption, the vehicle must have been purchased on or after July 1, 2005 and the name of the eligible disabled veteran must be included as an owner on the vehicle title.

(C) The consecutive three (3) year period computation is to be based upon the actual purchase date of the vehicle(s), as reflected in the ownership assignment date on the MSO or title certificate surrendered to the Commission at time of title application. To qualify for this excise tax exemption, the actual date of purchase of the vehicle must be more than three (3) years removed from the date of purchase of the prior vehicle to which the exemption was most recently applied.

(20) **Exemption for repossessed vehicle transferred back to former owner.** Ownership of a vehicle transferred by the repossessor back to the former Oklahoma title record owner(s) within thirty (30) days of issuance of the repossession title.

(A) Ownership must be identical to that reflected in the Oklahoma title record immediately prior to issuance of the repossession title. Ownership (as assigned by the repossessor) may reflect an additional name without the assessment of excise tax only if an exemption exists between the owners. Otherwise, any change in ownership will result in the assessment of excise tax.

(B) Title assignment to the former owner(s) must be completed within thirty (30) days of issuance of the repossession title.

710:60-7-8. Tornado excise tax credit

Credit will be allowed with respect to the excise tax due on a vehicle which is a replacement for a vehicle destroyed by a tornado ~~on October 9, 2001, or May 8 or 9, 2003, or destroyed by a tornado~~ in 2013, or any subsequent year, for which a Presidential Major Disaster Declaration was issued and on ~~whish~~which excise tax had been paid on or after January 1, 2012. Credit will be allowed on a vehicle which is a replacement for a vehicle destroyed by tornado in calendar years 2012 and 2013 for which no Presidential Major Disaster Declaration was issued and on which excise tax was paid on or after January 1, 2011.~~Unless otherwise noted, excise tax on the destroyed vehicle must have been paid within one (1) year preceding the loss~~. Credit will be allowed in the amount of excise paid on the destroyed vehicle, excluding any penalties. The credit may only offset any excise tax due on the replacement vehicle. No excess credit may be refunded. Proof of loss of the destroyed vehicle must ordinarily be provided by the registrant, i.e., a letter or other documentation from the insurance company, identifying the vehicle and confirming its loss. If such documentation is unavailable, the Motor Vehicle Division may be contacted for consideration of an alternative or exception to the documentary requirement.

SUBCHAPTER 9. MOTOR VEHICLE LICENSE AGENTS/AGENCIES

PART 5. SPECIFIC RECORDKEEPING DUTIES

710:60-9-52. Maintenance of required indexes and files

(a) **Files to be retained.** A motor license agent shall maintain records of semimonthly reports generated and related financial information pertaining to the collection and disposition of all monies due the state. Copies of individual transaction receipts are not required to be retained, unless the transaction required some special action or notation, or retention was specifically requested by the Motor Vehicle Division. Copies of documentation supporting any insurance verification override are to be retained. Copies of Vehicle Information Requests are to be retained. All referenced retained records are to be maintained by the motor license agent for a period of two (2) years.~~a file of agent copies of all transaction receipts issued by that office, in numerical order by tax/fee receipt number, as well as semimonthly reports prepared by that office. This file is to include all items and reports issued by the current agent, as well as the former agents for that agency, for the preceding two (2) years.~~

(b) **Disposition of files containing taxpayer information.** When disposing of files or records, the motor license agent is responsible for the proper destruction of any file or record containing confidential taxpayer information that was either generated by, or submitted to, his or her agency. The file or record is to be destroyed to the extent no such confidential information may be recovered ~~from it~~. ~~Acceptable options include:~~

~~(1) Shredding;~~

~~(2) Burning; or~~

~~(3) Delivering to the Oklahoma Tax Commission for destruction.~~

PART 7. SPECIFIC REPORTING DUTIES

710:60-9-72. Semimonthly reporting procedure

(a) **Closing dates for report preparation.** ~~All reports~~Reports are to be ended on the fifteenth (15th) and the last day of ~~the~~each month. ~~The original copy of the computer generated report is to be stapled to the completed Remittance Slip and sent in with the Motor Vehicle Report. The original copy of the computer generated Driver Licenses detail sheets are to be sent directly to the Department of PublicSafety. One copy of each Drivers License transaction is to be submitted with the detail sheets.~~Report summary pages are to be generated from the computer system and included with the required report transaction documentation. Driver license transaction reporting guidelines are established by the Department of Public Safety. IRP (International Registration Plan) transaction reporting guidelines are established by the Corporation Commission.

(b) **Transaction documents.** Semimonthly report transaction documentation is to be prepared and submitted to the Commission in a manner outlined by the Division. The Division shall communicate any report preparation procedural changes to motor license agents in a timely manner.~~Except for manufactured home title cancellation transaction documents which are to be bundled separately and placed on top of the other semi-monthly report documents, transaction documents are to be placed in a report box separated into three (3) groups:~~

~~(1) **Group 1: Transactions with supporting documents.** Transaction documents are to be placed in boxes provided by the Oklahoma Tax Commission, with a separator sheet placed between each separate transaction. Documents are not to be stapled or paper clipped.~~

~~(2) **Group 2: Transactions without supporting documents.** Transactions without supporting documents are to be placed on top of Group 1.~~

~~(3) **Group 3: Semi-monthly report and decal sheets.** Decal sheets are to be placed on top of Group 2. The semi-monthly report is to be placed in the box on top of the decal sheets.~~

(c) **When reports due; penalties for late report.** All agents are to prepare semimonthly reports to be received by the Oklahoma Tax Commission no later than ten (10) working days after the cutoff date of the report. If not received within that period, a penalty of 1% of the gross amount of the report shall be assessed. The penalty increases to 3% should the report not be received within another 5 days.

PART 9. SPECIFIC FISCAL DUTIES

710:60-9-91. Advice of deposits and depositing procedure

(a) **Agent to establish Oklahoma Tax Commission ~~Motor License Agency Account~~motor license agency account.** Every motor license agent shall establish an Oklahoma Tax Commission bank account in a bank or bank authorized to do a banking business in this state. At any time that collected receipts total One Hundred Dollars ($100.00) or more, all funds due the Oklahoma Tax Commission must be deposited into this account within one banking day of collection.

(b) **Agent to establish motor license agency operational account.** In addition, an operational account must be established in which all other funds received by a motor license agent in the performance of his or her duties shall be deposited and shall not be commingled with any other funds.

(c) **Advice of deposit slips to be typewritten.** Advice of Deposit slips, padded in duplicate, are consigned to agents by the Oklahoma Tax Commission to be used for making deposits into the Oklahoma Tax Commission account. All slips must be typed, with the agent's number and date of collection listed.

(d) **Distribution of copies; record retention; update of computer data.** One copy, after being stamped or initialed by the bank, is to be submitted to the Oklahoma Tax Commission, Motor Vehicle Division in the manner prescribed by the Commission. The agent is to retain a copy as a permanent record. It is suggested that the agent's copies be filed with the

agent's copy of the semimonthly report to which they pertain. Agents are required to enter all Advice of Deposit information to the Oklahoma Tax Commission MLA deposit entry system immediately following deposit of the described funds.

(e) **Reconciliation with semimonthly report.** All Advice of Deposits that apply to a particular semimonthly report should be listed on that report's remittance slip. If the total of the Advice of Deposit slips does not equal the semimonthly report amount, a supplemental deposit in the amount of the shortage must be made within one banking day of the close of the report period. The amount of any supplemental deposit will not be significant since the total of the daily deposits for a report period should be very close, if not equal to, the report total.

(f) **Checks.** All checks received must be made payable to the Oklahoma Tax Commission and must include ~~one of the following: Driver License Number, Social Security Number, or Department of Public Safety Identification Number~~ either the driver license number or Department of Public Safety identification number of the remitter . The agent is not required to accept payment by check when late registration penalties are due.

(g) **Insufficient checks.** Should an agent's bank notify them of an insufficient check being deposited into the Oklahoma Tax Commission account, the agent must redeposit monies into the account to offset the debit. No Advice of Deposit is needed since the amount has already been included in a previous one.

(h) **Change of bank.** If changing banks, the agent must request new banking papers from the Oklahoma Tax Commission. The new banking papers must be completed and returned to the Oklahoma Tax Commission before making any deposit in the new bank.

(i) **Penalties for late deposits.** If funds due the Oklahoma Tax Commission are not deposited to the Oklahoma Tax Commission account within one banking day of collection, a penalty of 1% of the deposited amount will be assessed. If the deposit is not made within five days of collection, the penalty increases to 3% of the deposit amount.

(j) **Penalties incurred not a part of agency operating expenses.** Any motor license agent who pays a penalty for failure to make timely payments may not allocate that payment as a part of operating expenses, but must use personal funds for payment of the penalty.

PART 11. AGENCY OPERATION

710:60-9-120. Summary of operational requirements

The following is a summary of operational requirements for agents and agencies:

(1) Agents are required to operate the agency forty (40) hours a week, of which at least four (4) hours are after normal business hours or on Saturday. The number of operating hours required of a specific agency may be reduced upon written approval from the Oklahoma Tax Commission.

(2) Agents are required to collect fees as outlined by state statute, and issue all documents (i.e. license plates, registration decals, title certificates) prescribed by the Oklahoma Tax Commission. Additionally, an agent must issue all titles and liens, boats and motors titles - registrations, etc., prescribed by the Oklahoma Tax Commission.

(3) Agents are required to deposit all monies required by the Commission into the designated Oklahoma Tax Commission bank account within one (1) banking day of collection, preparing an Advice of Deposit which is to be submitted to the Oklahoma Tax Commission in the manner prescribed by the Commission.

(4) Agents are required to prepare semimonthly reports to be received by the Oklahoma Tax Commission no later than ten (10) working days after the cutoff day of the report.

(5) Agents must perform all necessary inspections required by the Oklahoma Tax Commission ~~Motor License Agents~~motor license agents manual.

(6) Agents are required to provide a notary within their agency.

(7) Agents are required to insure that all transactions are processed and entered to the Oklahoma Tax Commission computer system on a daily basis.

(8) The Advice of Deposit shall be submitted to the Oklahoma Tax Commission, Motor Vehicle Division in the manner prescribed by the Commission. Advice of Deposit information is to be entered to the Oklahoma Tax Commission MLA deposit entry system immediately following depositing of the funds.

(9) Agents are responsible for errors in tax computations and/or fee computations and collections as determined by the Commission.

(10) A motor license agent shall reimburse the Oklahoma Tax Commission depository account for all dishonored checks which have been deposited to the account. The account is not to be charged. Dishonored checks that cannot be collected by the agent within thirty (30) days of retrieval from the depository bank are to be forwarded to the Oklahoma Tax Commission for credit and appropriate collection efforts.

(11) Agents are required to maintain files of all receipts and required reports issued by their office, including those of a former agent, if applicable, for at least two (2) years. Transaction receipts are to be maintained in ascending receipt number order.

(12) Agents must pay or account for all missing items identified by an inventory audit no later than thirty (30) days after billing.

(13) Agents shall not issue license plates, registration decals, receipts, or any type of document until payment of all applicable taxes and fees has been received in full. Payment may be made by cash, money order, personal or company check, cashier's check, or by a nationally recognized credit or debit card. The Tax Commission shall determine which nationally recognized credit or debit cards will be required to be accepted by motor license agents, ensuring no loss of state revenue results from their use. All checks and money orders are to be made payable to the Oklahoma Tax Commission.

(14) Agents are required to maintain strict compliance with the Motor Vehicle Licensing and Registration Act and with the rules, regulations, fee schedule, and procedures as set forth in the Motor License Agents Manual of Procedure and instructional material periodically issued by the Tax Commission.

(15) Agents are responsible for keeping abreast of, as well as implementing, statutory and procedural changes and instructions issued by the Tax Commission. Annual area schools conducted by the Commission are an important component in disseminating such instruction. Area school attendance is not mandatory, unless specifically mandated by the Commission, but is strongly encouraged.

(16) Agents are required to post the Public Notice Fee Chart, in addition to any other required public notices provided by the Tax Commission, in a conspicuous location in the agency.

(17) All customers' checks are to be made payable to: Oklahoma Tax Commission. One of the following identifying numbers must be listed on the face of the check: ~~drivers~~the remitter's driver license number, or a Department of Public Safety identification number~~, or a Social Security number~~.

(18) Motor license agents are authorized to perform additional duties as directed by the Tax Commission, in compliance with Oklahoma statutory guidelines.

[OAR Docket #15-426; filed 6-10-15]

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

[OAR Docket #15-427]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Reports and Returns; Payments and Penalties; Records
Part 1. General Provisions
710:65-3-4 [AMENDED]
Subchapter 5. Audit and Assessment
710:65-5-5 [AMENDED]
Subchapter 7. Duties and Liabilities
710:65-7-3 [AMENDED]
710:65-7-18 [AMENDED]
710:65-7-24 [NEW]
Subchapter 9. Permits
710:65-9-10 [AMENDED]
Subchapter 13. Sales and Use Tax Exemptions
Part 3. Agricultural Transactions
710:65-13-15 [AMENDED]
Part 7. Churches
710:65-13-40 [AMENDED]
Part 9. Computers; Data Processing; Telecommunications
710:65-13-51 [AMENDED]
710:65-13-54 [AMENDED]
Part 15. Hazardous Wastes
710:65-13-80 [AMENDED]
Part 16. Electronic Goods - Refitting, Refurbishing or Repairing
710:65-13-85 [AMENDED]
Part 18. Precious Metals
710:65-13-95 [AMENDED]
Part 29. Manufacturing
710:65-13-153 [AMENDED]
710:65-13-155 [AMENDED]
710:65-13-156 [AMENDED]
Part 31. Medicine, Medical Appliances, and Health Care Entities and Activities
710:65-13-171 [AMENDED]
Part 35. Newspapers; Periodicals; Programs; Media
710:65-13-194 [AMENDED]
Part 43. Social, Charitable, and Civic Organizations and Activities
710:65-13-348 [AMENDED]
Subchapter 19. Specific Applications and Examples
Part 1. "A"
710:65-19-9 [AMENDED]
Part 5. "C"
710:65-19-50 [REVOKED]
710:65-19-58 [REVOKED]
710:65-19-61 [AMENDED]
Part 11. "F"
710:65-19-105 [AMENDED]
Part 15. "H"
710:65-19-142 [AMENDED]
Part 39. " T "
710:65-19-330 [AMENDED]
Part 45. "W"
710:65-19-367 [AMENDED]
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n/a
ANALYSIS:

Section **710:65-3-4** relating to contents of a monthly sales tax report has been amended to require inclusion of a vendor's social security number or federal employer identification number only in the circumstances where the vendor's sales tax permit number is not provided.

Sections **710:65-5-5** and **710:65-7-3** have been amended to implement the provisions of Senate Bill 1228 by outlining the parameters under which a person will be deemed personally liable for the nonpayment of sales tax. **[68:253]**

Section **710:65-7-24** has been amended for purposes of Oklahoma's compliance as a member state with the Streamlined Sales and Use Tax Agreement.

Section **710:65-13-15** has been amended to remove the beekeeping exclusion from the activities that constitute agricultural production for purposes of the sales tax exemption afforded holders of agricultural exemption permits. **[68:1358].**

Section **710:65-13-40** has been amended to delete the requirement that an IRS determination letter be presented in order for a church to obtain a sales tax exemption card. **[68:1356(7)].**

Sections **710:65-13-95, 710:65-19-9, 710:65-19-61** and **710:65-19-105** have been amended and Section **710:65-19-50** has been revoked consistent with the passage of SB 862 which amended the sales tax exemption for sales of gold, silver, platinum, palladium or other bullion items such as coins, bars and legal tender of any nation by removing the requirement that in order to

be exempt the items must be stored within a recognized depository facility. **[68:1357(42)].**

Section **710:65-19-142** has been amended to remove the requirement that hospitals, infirmaries, or sanitariums possess a sales tax permit in order to purchase exempt from sales tax prescription drugs for patient treatment. **[68:1357(9)].**

Section **710:65-19-58** has been revoked as obsolete and unnecessary.

Sections **710:65-7-18, 710:65-13-171, 710:65-19-330** and **710:65-19-367** have been amended along with other sections that may be amended to clarify policy, improve readability, correct scrivener's errors, remove obsolete language, update statutory citation, and ensure accurate internal cross-references.

Sections **710:65-3-4, 710:65-9-10, 710:65-13-51, 710:65-13-54, 710:65-13-80, 710:65-13-85, 710:65-13-153, 710:65-13-155, 710:65-13-156, 710:65-13-194** and **710:65-13-348** have been amended, changing *Rules of Practice and Procedure before the Oklahoma Tax Commission* to *Rules of Practice and Procedure before the Office of the Administrative Law Judges* and also updating the internal cross-references.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 3. REPORTS AND RETURNS; PAYMENTS AND PENALTIES; RECORDS

PART 1. GENERAL PROVISIONS

710:65-3-4. Contents of monthly sales report

(a) **General provisions.** Every vendor shall file a monthly report for sales made the preceding month stating the name of the seller, address, telephone number, ~~federal employer identification number (FEIN) or social security number (SSN)~~and, sales tax number as it appears on the sales tax permit of the business and the period (month and year) covered by the report. In instances where a business does not provide a sales tax number, the federal employer identification number (FEIN) or social security number (SSN) of the business is required to be included on the sales tax report. In addition, the report shall disclose the following:

(1) Total gross receipts for the preceding month from sales, both taxable and non-taxable.

(2) The **"sales value"** of all withdrawals from inventory of goods initially purchased exempt from sales tax, including all items withdrawn for gifts, donations, prizes or business or personal use. Included is the cost of all withdrawals from inventory of goods initially purchased on a tax deferred basis pursuant to a direct pay permit which are subsequently withdrawn for a taxable use.

(3) Deductions allowed by law. Deductions not specifically delineated on the face of the return must be fully explained in the space provided.

(4) The amount of tax due, including any city or county tax, or both, as described in (d) of this Section.

(5) The balance of tax due less any remuneration earned, as described in (b) of this Section.

(A) The return should show the amount of interest (if any) that is due.

(B) The return should show the amount of penalty (if any) that is due.

(6) Such other reasonable information as the Commission may require. [**See:** 68 O.S. §§1365, 1367.1]

(b) **Remuneration.** When the sales tax report with all required information included is timely filed, the vendor may deduct the applicable remuneration of one percent (1%) as an allowance to reimburse the vendor for the expenses incurred in keeping records, preparing and filing reports, remitting tax to the Commission, etc. The remuneration may not be deducted and is not available to a vendor who files an incomplete report, files his report after the date of delinquency, or fails to make full payment on or before the due date.

(c) **Exception to the requirement to file electronically.** The vendor may apply in writing to the Business Tax Electronic Filing Coordinator, Oklahoma Tax Commission, ~~440 S. Houston Suite 501, Tulsa, OK, 74127-8913~~Taxpayer Assistance Division, 2501 N. Lincoln Blvd., Oklahoma City, OK 73194, for a determination that the vendor is unable to participate in the electronic funds transfer and electronic data interchange program, and if the application is approved, the vendor will be permitted to report on paper and to deduct the remuneration of one percent (1%).

(1) To determine whether a vendor is "unable" to file electronically, the following guidelines shall be utilized:

(A) The taxpayer does not have access to a computer or internet access at home or place of business; and,

(B) The taxpayer does not use a tax preparer that has a computer or one that does not have internet access.

(2) Any exception to the electronic filing requirement will be granted for only twelve (12) months. At the end of the exception period the taxpayer's electronic filing capability may be reviewed.

(3) An aggrieved taxpayer may protest the determination of the Commission as provided by 68 O.S. § 207 pursuant to *OAC* 710:1-5-20 through 710:1-5-49, the ~~rules~~Rules of ~~practice~~ Practice and ~~procedure~~Procedure before the ~~Commission~~Office of the Administrative Law Judges.

(d) **Reporting for city and county taxes.**

(1) The state tax is determined by applying the state rate to the amount of net taxable sales (all sales less deductions allowed by law).

(2) The amount of city sales tax is determined by multiplying the amount of net taxable sales for each city by the rate for that city.

(3) The amount of county sales tax is determined by multiplying the amount of net taxable sales for each county by the rate for that county.

(e) **Excess tax collected.** If the vendor has collected, in the aggregate, an amount of sales tax from its customers, larger

than the amount which would result from multiplying the taxable sales by the tax rate, whether due to the use of the bracket charts supplied by the Commission, the use of an electronic cash register that rounds up the tax, or any other reason, the vendor is responsible for remitting the total tax collected. The statement **"Excess Tax Collected"** should be written on the face of the report, under the line captioned **"Total Due."**

SUBCHAPTER 5. AUDIT AND ASSESSMENT

710:65-5-5. Issuance of sales tax assessments

~~(a)~~ ~~**General rule.**~~ Sales~~/use~~ tax assessments will be issued against the legal entity as well as against other person(s) who may be liable for the tax pursuant to law. Any person shall be liable for the payment of sales tax if during the period of time for which the assessment was made the person was responsible for the collection and remittance of sales tax or had direct control, supervision or responsibility for filing returns and making payments of the tax due the State of Oklahoma.

~~(b)~~ ~~**Sole proprietorships.** Assessments against sole proprietorships will be issued against the proprietor. The trade name, if any, will be identified following the proprietor's name preceded by the initials DBA.~~

~~(c)~~ ~~**Partnerships.** Partners will be assessed jointly and identified by all of the partners' names followed by the trade name, if any. In the case of a limited partnership, only the partnership and general partner(s) will be assessed.~~

~~(d)~~ ~~**Limited liability companies.** A limited liability company (LLC) will be assessed in the name of the LLC and the specified members or managers specified as responsible for the collection of sales tax. If no member or manager is specified, all members and managers will be assessed.~~

~~(e)~~ ~~**Corporations; trusts; receiverships.** Corporations, trusts and receiverships will be assessed in the legal name of the corporation, trust or receivership. Furthermore, principal corporate officers will be assessed as corporate officers and as individuals. Corporate stockholders will not be assessed unless the particular stockholder is also a principal corporate officer.~~

~~(f)~~ ~~**Trustees and receivers.** Trustees and receivers will be assessed in their official capacity as trustee or receiver and not in their individual capacity. [**See:** 68 O.S. §221]~~

SUBCHAPTER 7. DUTIES AND LIABILITIES

710:65-7-3. Personal liability for sales tax due~~;~~ ~~corporate officers, partners, individuals~~

Sales tax is paid by the consumer/user to the vendor as trustee for the state. Any person required to collect sales tax as a trustee for the state will be held personally liable for the sales tax due. ~~In the case of a corporation each **"principal"** officer will be held personally liable for the sales tax due.~~

~~(1) The Commission identifies **"principal"** officers as:~~

~~(A) President,~~

~~(B) Vice President,~~

~~(C) Secretary,~~

~~(D) Treasurer, or~~

~~(E) Secretary/Treasurer.~~

~~(2) Some factors which may influence the identification of a person either as a "principal" officer of a corporation or not may be:~~

~~(A) limited responsibilities within the corporation (only responsibility is as keeper of the corporate seal),~~

~~(B) limited duties within the corporation (only duty is taking minutes at Board of Directors meeting), and~~

~~(C) limited authority within the corporation (could not write checks on the corporate account).~~

~~(3)~~ The decision as to whether an individual is personally liable for sales tax ~~officer is a "principal" officer~~ shall be made on an "individual case" basis. The standard to be applied is that of determining liability for payment of federal withholding tax pursuant to the Internal Revenue Code of 1986, as amended, or regulations promulgated pursuant to same. Once it is finally determined that a person is liable~~a principal officer~~, a tax warrant which has the force and effect of a judgment or lien will be filed against that person individually for the full amount of the liability, i.e. tax, interest and penalty. [**See:** 68 O.S. ~~§1361(A)~~§ 253]

710:65-7-18. Vendor's responsibility - sales to, by, or for the benefit of, neighborhood watch organizations

In the case of sales made to purchasers claiming exemption because the purchases are made by, or for the benefit of a neighborhood watch association, the vendor must obtain the items of information described in this section:

(1) A copy of the neighborhood watch association's sales tax exemption card that was issued by the Oklahoma Tax Commission pursuant to Section ~~710:65-13-344~~710:65-13-348.

(2) A signed, dated statement by the purchaser listing the purchaser's name, address and telephone number which states that the purchase is being made by or for the benefit of the neighborhood watch organization. The statement shall also contain the name, address and telephone number of the person responsible for keeping a record of the purchases made by or for the benefit of the organization.

710:65-7-24. Seller's relief from certain liability

Sellers and Certified Service Providers (CSPs) will be relieved from liability for having charged and collected the incorrect amount of sales or use tax resulting from the seller or CSP relying on erroneous data provided in the best practices taxability matrix, available online at www.tax.ok.gov. If the taxability matrix is amended, sellers and CSPs are relieved from liability until the first day of the calendar month that is at least 30 days after notice of a change is submitted to the Streamlined Sales Tax Governing Board, provided the seller or CSP relied on the prior version of the taxability matrix.

SUBCHAPTER 9. PERMITS

710:65-9-10. Direct payment permits (DPP)

(a) **General provisions.** The holder of a valid Oklahoma direct payment permit may make purchases of taxable items, for use in its Oklahoma enterprises and not for resale, and defer the taxes imposed by the Oklahoma Sales and Use Tax Codes until such time as the items are first used or consumed in a taxable manner, if all requirements described in this Section are met. [**See:** 68 O.S. § 1364.1]

(b) **Qualification for direct payment permit.** To qualify for a direct payment permit, valid for three (3) years, an applicant must meet the requirement set forth in paragraph 1, 2, or 3.

(1) **Documentation for established businesses.** The applicant must be making purchases of $800,000.00 annually in taxable items for the use in its Oklahoma enterprises, and not for resale and annual purchases of $800,000.00 must be verifiable from the applicant's sales or use tax records.

(2) **Documentation for new or expanding businesses.** An applicant without any qualifying sales and use tax reporting history in Oklahoma must submit to the Commission along with its application, a sworn statement that "applicant shall purchase $800,000.00 of taxable items and services annually for use in its Oklahoma enterprises and not for resale." Adequate records or documentation must be available to support the statement of projected purchases.

(3) **Documentation for healthcare providers.** The applicant must be making purchases of drugs for the treatment of human beings, medical appliances, medical devices and other medical equipment including but not limited to corrective eyeglasses, contact lenses, hearing aids, prosthetic devices, durable medical equipment, and mobility-enhancing equipment for administration or distribution by a practitioner, as defined in 68 O. S. § 1357.6(B), who is authorized by law to administer or distribute the referenced items and the cost of such items will be reimbursed under the Medicare or Medicaid programs.

(c) **Other qualifications.** In addition to any other conditions mandated by statute, all applicants for a direct payment permit must comply with all conditions, prerequisites and qualifications described in (1) through (4) of this subsection:

(1) **Overall compliance with tax provisions.** The applicant must be in compliance with all pertinent tax laws of the State of Oklahoma and with the respective rules of the Commission.

(2) **Applicant must establish reliability and accuracy of accounting methods.** All applicant(s) must be able to establish to the satisfaction of the Commission that the applicant is or will be using an accounting method which clearly distinguishes between taxable and nontaxable purchases. An explanation of the accounting procedures which will be used to determine the taxability of any purchase and to ensure that any tax due is correctly accrued and remitted must accompany the application for a direct payment permit. Additionally to substantiate the exempt purchase of medical equipment pursuant to subsection (a) of 710:65-13-173, a healthcare provider holding a direct pay permit must maintain separate from confidential patient records the following information:

(i) Patient case number or account number;

(ii) Type of insurance and

(iii) Item description or product number.

(3) **Compliance with reporting and remitting requirements; waiver of discount.** The applicant must agree to accrue and pay all taxes imposed by the Sales or Use Tax Codes, on the applicable direct payment sales or use tax return, for items not specifically exempted. The applicant must agree to make the payments to the State on or before the 20th day of the month following the applicable reporting period in which the items become subject to the tax by reason of their consumption in this State. A written agreement to this effect, signed by an officer or other person authorized to legally bind the applicant, and an acknowledgement that the discount allowed by Section 1367.1 of Title 68 is waived on all purchases which are taxable to the applicant, must be furnished to the Commission and it must be signed and returned along with the application for a direct payment permit.

(4) **Compliance with restrictions on purchases for resale.** The applicant must agree to give a resale certificate, rather than a direct payment permit, for any item that will be resold, as provided by the Sales or Use Tax Codes.

(d) **Application for direct payment permit.** Application for a direct payment permit may be made to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 Lincoln Blvd., Oklahoma City, OK 73194.

(e) **Granting of permit discretionary; options available upon denial.** The Oklahoma Tax Commission shall be the sole judge of an applicant's qualifications and may deny an application or refuse to issue a direct payment permit. However, an applicant is not precluded from submitting an amended application or may submit a new application after a reasonable period of time from the date of the original application. For purposes of this subsection **"reasonable period of time"** means a period of time of not less than twelve (12) calendar months duration from the date of the Commission denial or refusal to issue the permit.

(f) **Issuance, scope, limitations of direct payment permit.** When a direct payment permit is issued to a particular legal entity, it will include all branches and divisions of that entity which are purchasing taxable items. A direct payment permit issued to a supplier by one branch or division shall apply to purchases made by all branches or divisions from the same supplier. For purposes of this Section, **"branches and divisions"** shall be limited those subunits or groups associated with a single unique federal employers' identification number. A direct payment permit-holder may not authorize any other person or entity to purchase any taxable items under the permit. Use by unauthorized persons may result in revocation of the permit.

(g) **Use of direct payment certification procedure with vendors.** A direct payment permit-holder must provide its vendors with the direct payment certification defined in this

Section and a copy of its direct payment permit in order to make those purchases to which the permit is applicable.

(h) **"Direct payment certification" described. "Direct payment certification"** means the procedure by which a direct payment permit-holder provides a vendor with properly completed documentation and certification as to its deferred status. Properly completed documentation may consist of a copy of the direct payment permit, multi-state exemption certificate, or other document, so long as it contains the information described in (1) through (4) of this subsection.

(1) A **copy** of the purchaser's Direct Payment Permit (DPP), or if unavailable, the name, address, and DPP number of the purchaser;

(2) A statement that the permit-holder claims deferral of the payment of state, city and county sales or use taxes upon its purchases of taxable tangible personal property or services;

(3) A statement that the articles purchased are for use in the purchaser's Oklahoma enterprises, and not for resale;

(4) The signature of the purchaser or a person authorized to legally bind the purchaser, and date signed.

(i) **Limitations on use of direct payment procedure.** Direct payment certification procedures are not applicable to the purchase of materials or supplies used, transferred, or consumed by a third party in performing services for the direct payment permit-holder, regardless of whether the third party is a contractor, service provider, or other person.

(j) **Incidence of tax for purchases made pursuant to direct payment permit and stored in Oklahoma.** For taxable items purchased under a direct payment permit, the incidence of Oklahoma sales and use taxes to be accrued and remitted on items stored in Oklahoma is to be determined by reference to this subsection, as well as to the provisions of the Oklahoma Sales and Use Tax Codes. [**See:** 68 O.S. § 1361(C)]

(1) **Use tax to be accrued on items and goods purchased outside Oklahoma.** Items and goods purchased outside Oklahoma pursuant to an Oklahoma direct payment permit, which are intended solely for use in other states, but which are stored in the State pending shipment to such other states, or which are temporarily retained for the purpose of fabrication, repair, testing, alteration, maintenance, or other service, are not subject to Oklahoma use tax. However, if the items purchased out-of-state are first used or consumed in Oklahoma, then Oklahoma use tax and any applicable city use tax shall be accrued and remitted to the Commission by the direct payment permit-holder.

(2) **Sales tax to be accrued on items and goods purchased in Oklahoma.** Items and goods purchased in Oklahoma pursuant to a valid Oklahoma direct payment permit are subject to Oklahoma sales and applicable city and county sales taxes at the time they are first used or consumed in a taxable manner. Sales made to direct payment permit holders of tangible personal property intended solely for use in other states, but which is stored in Oklahoma pending shipment to other states or which is temporarily retained in Oklahoma for the purpose of fabrication, repair, testing, alteration, maintenance, or other service are not subject to Oklahoma sales tax.

(k) **Monthly reports required.** All direct payment permit-holders must file sales and use tax returns, in the manner set out in this subsection, whether or not they have either sales tax or use tax to report.

(1) Purchases made in Oklahoma, using the taxpayer's DPP, such that the Sales Tax otherwise due has been deferred, are to be reported monthly on the Sales Tax Report Form which bears taxpayer's Direct Payment Permit Number. This report is in addition to any Sales Tax Report which is required to be filed using taxpayer's Sales Tax Permit Number.

(2) Purchases made outside Oklahoma, using the taxpayer's DPP, such that the Use Tax otherwise due has been deferred, are to be reported monthly on the taxpayer's Use Tax Report Form, using the Use Tax Account Number.

(l) **Cancellation, suspension, revocation of permit.** A direct payment permit may be cancelled by the Commission if the annual purchases fall below the qualifying threshold. Further, the Commission may revoke a permit upon information that the permit has been used by persons other than to whom it was issued. Finally, the Commission may suspend, cancel, or revoke a direct payment permit, at any time, for non-compliance with the provisions of this Section, with applicable Oklahoma tax statutes, or for other good cause shown. Proceedings related to the cancellation or refusal to issue a license or permit pursuant to this Section shall be governed by 710:1-5-100 and 710:1-5-21 through ~~710:1-5-48~~710:1-5-49 of the permanent rules of the Commission.

(m) **Procedure upon cancellation, revocation, or forfeiture.** Any entity whose direct payment permit is either voluntarily forfeited, or is cancelled or revoked by action of the Commission, must immediately notify all vendors from whom purchases of taxable items are made advising them that any certification provided to them pursuant to the forfeited, cancelled or revoked direct payment permit is no longer valid.

SUBCHAPTER 13. SALES AND USE TAX EXEMPTIONS

PART 3. AGRICULTURAL TRANSACTIONS

710:65-13-15. "Agricultural production" defined; taxable and exempt transactions

(a) **Definitions.** For the purposes of this Section:

(1) **"Agricultural production"** and **"production of agricultural products"** is limited to what would ordinarily be considered a farming or ranching operation undertaken for profit. The term refers to the raising of food crops or livestock for sale. Included within the meaning of **"agricultural production"** and **"production of agricultural products"** are ranches, orchards, and dairies. Also included is any feedlot operation, whether or not the land upon which a feedlot operation is located is used to grow crops to feed the livestock in the feedlot and

regardless of whether or not the livestock fed are owned by persons conducting the feedlot.

(2) **"Farmers"** means persons engaged in agricultural production or production of agricultural products.

(3) **"Farming"** or **"ranching"** means the production, harvesting or processing of agricultural products.

(4) **"Livestock"** means cattle, horses, sheep, goats, asses, mules, swine and also chickens, turkeys, and other domesticated fowl. It also includes ~~american~~American bison, emus, ostriches and llamas.

(b) **Examples of persons engaged in farming, ranching or agricultural production.** Besides the persons defined as farmers and ranchers above, the law recognizes persons engaged in the following types of activities, whose aim is the making of a profit, to also be engaged in farming, ranching or agricultural production:

(1) Wholesale divisions of nurseries are considered to be farmers and the planting, growing, cultivation and harvesting of shrubs, flowers, trees and other plants for sale in the wholesale division of a nursery operation are defined to be farming operations.

(2) Persons who plant, cultivate, and harvest sod for commercial sale are also considered to be farmers.

(c) **Examples of persons who are not engaged in farming, ranching, or agricultural production.** The following activities **do not** qualify as farming, ranching, or agricultural production:

(1) Operation of commercial greenhouses;

(2) Operation of plant nurseries, except their wholesale divisions;

(3) Catfish raising;

(4) ~~Beekeeping;~~

~~(5)~~ Ownership of livestock solely for one's own use for pleasure riding, trail riding, performance riding, participation in horse shows, or racing; and,

(~~6~~5) The raising of cats, dogs, other fur-bearing animals not included in the definition of livestock, or non-domesticated fowl.

(d) **Sales of feed, fertilizers, biologicals, and pharmaceuticals.** The statute provides an exemption from sales tax for sales of certain items, such as feed, fertilizer, pharmaceuticals, biologicals, seeds, plants, and pesticides, when sold to a person regularly engaged in farming or ranching, for profit, and the items are to be used and in fact are used in agricultural production. Sales of agricultural fertilizer, pharmaceuticals and biologicals sold to a person engaged in the business of applying such materials on a contract or custom basis are specifically exempted from sales and use tax.

(e) **Sales to persons other than farmers or ranchers.** Sales of tangible personal property are subject to the sales or use tax under this rule, if the sales are to persons other than a farmer or rancher, regularly engaged in business for profit, or if the sales are made to a farmer or rancher, but the property is used or consumed for a purpose other than the production of agricultural products for sale.

(f) **Sales for personal use.** Sales to a farmer or rancher of fuel, clothing, and all other tangible personal property for personal living or human consumption or use are taxable. Sales of tangible personal property are taxable when the property is used in producing food or other products for personal consumption and not for sale. Similarly, sales of seed, fertilizer, equipment, etc. to anyone for use on homes, gardens, lawns, parks and golf courses or for use by landscape gardeners are taxable.

(g) **Farm machinery.** Sales of farm machinery used directly on a farm or ranch in the production of agricultural products are exempt. Such machinery is also exempt if sold to a custom harvester, baler, producer or planter performing service on a farm or a ranch.

(1) **"Farm machinery"** includes:

(A) Expendable supplies, such as baling wire, and binders twine, hand tools, and implements such as fence stretchers, picks, posthole diggers, scoops and shovels;

(B) Lubricants for farm machinery;

(C) Repair or replacement parts for machinery used directly on a farm or ranch in production of agricultural products;

(D) Fencepost, ~~cattleguards~~cattle guards, gates and chutes;

(E) Buildings and structures which are essentially an item of equipment or machinery for agricultural production if the structure is specifically designed for such use and the structure cannot be economically used for any other purpose, for example: an automated laying house or farrowing house.

(2) **"Farm machinery"** does **not** include any motor vehicle licensed for highway use.

(h) **Exemption limited to use in agricultural production.** The fact that an item is purchased for use on a farm or ranch, or that a piece of equipment is convenient, does not necessarily make the purchase exempt from sales tax. The items purchased must be directly used on the purchaser's farm or ranch in the production of agricultural products. "To be directly used by the purchaser on a farm or ranch in the production of food or agricultural products" requires that the property in question must have a direct effect on the article being produced.

(i) **Examples of taxable items.** The following is a partial list of taxable items:

(1) Water supply systems for personal use.

(2) Repair parts for all motor vehicles (licensed with a farm tag or any other tag).

(3) Household appliances.

(4) Garden and lawn equipment.

(5) Personal apparel.

(6) Pets and their supplies.

(7) All equipment, supplies and tools to maintain personal home and/or vehicle/ equipment storage buildings.

(8) Electricity for non-agricultural use.

(9) LPG storage tanks for fuels used for domestic purposes.

(10) Livestock, not including horses, but including cattle, mules or other domestic or draft animals except those sold for resale to a person who holds a valid sales tax permit or those sold by the producer by private treaty or at a special livestock sale.

(11) All computers and software, except that which is to be used directly on a farm or ranch in the production, cultivation, planting, sowing, harvesting, processing, spraying, preservation or irrigation of any livestock, poultry, agricultural or dairy products produced from such lands.

(12) Home and or office furnishings and supplies.

(13) Groceries and purchases of meals and beverages at restaurants.

(j) **Examples of items not commonly exempt, except when used in agricultural production.** The following items are taxable, unless used directly in agricultural production:

(1) ~~Liquified~~Liquefied petroleum gas (LPG).

(2) Communication radios.

(3) Building materials, including:

(A) Roofing cement.

(B) Lumber.

(C) Electrical wiring.

(D) Nails, staples, and other fasteners.

(k) **Examples of exempt items.** The following items are **exempt** if used directly in agricultural production, or as otherwise stated:

(1) Electric fence insulators.

(2) Electric fence chargers.

(3) Cattle electric water warmer & tank.

(4) Cattle water tank.

(5) Cattle squeeze chute.

(6) Welding machines and associated equipment, including the lease or rental of both the equipment and the cylinders used to store the gases used in welding. Welding rod, oxygen, acetylene are exempt, providing welding machine with which they are used is qualified for the exemption.

(7) Sprays for control of flies & lice, insect repellent.

(8) Pinkeye patches, livestock wormers.

(9) Disinfectants (alcohol, iodine).

(10) Breeding supplies (includes semen, biostate sales & liquid nitrogen for storage).

(11) Drugs for disease or bacteria control such as penicillin, milk fever medicines, mastitis treatment.

(12) Supplies for administering drugs to farm animals for production (syringes, needles).

(13) Vaccines for preventive disease.

(14) Bottles, nipples & mixing containers for feeding calves.

(15) Farm tractors.

(16) Combines.

(17) Hay balers, mowers, rakes & loaders.

(18) Cultivators.

(19) Harrows, disks, planters, drills.

(20) Windmills (except for domestic use).

(21) Spray machines.

(22) Mechanical brush cutters, ensilage cutters.

(23) Grain grinders.

(24) Electric milking machines & separators.

(25) Standby generators (except those for domestic use).

(26) Silo unloaders, silage distributor.

(27) Augers-power take off.

(28) Bale loaders.

(29) Crust busters.

(30) Diamond packers

(31) Rotary hoes.

(32) Bulk milk tanks & pipeline milkers.

(33) Power take off post hole diggers.

(34) Motor chain saw (to clear land).

(35) Repair parts for farm equipment (includes tires, batteries, oil filters, belts, air filters & other parts).

(36) Diesel & special fuels (for agricultural use).

(37) Antifreeze (for agricultural use).

(38) Oil & grease (for agricultural use).

(39) Stock tanks.

(40) Grain storage bins.

(41) Stock trailers.

(42) Wire fencing.

(43) Fence posts.

(44) Air conditioner (for agricultural use).

(45) Feed racks.

(46) Bulk feed bins & associated equipment.

(47) Silo loading chutes.

(48) Farm wagons, farm plows, truck unloaders.

(49) Fertilizer spreading equipment.

(50) All farm animals for production.

(51) Containers used to package farm products for sale.

(52) Cattle chutes.

(53) Hay wire or twine, hay hooks.

(54) Ear tags, neck tags for cattle.

(55) Seeds, plants.

(56) Fertilizers.

(57) Insecticides.

(58) Packaging materials, such as sacks, wrappers, and crates, for use in packing, shipping or delivering of agricultural products. This exemption shall not apply to any packaging material which can be used more than once or which is ordinarily known as a returnable container, except those specifically noted under 68 O.S. § 1359(3), 68 O.S. § 1359(4), and 68 O.S. § 1359(14).

(59) *"Returnable cartons, crates, pallets, and containers used to transport mushroom products from a farm for resale to the consumer or processor."* [**See:** 68 O.S. § 1359(14)]

(60) Salt blocks (for agricultural use).

(61) Irrigation equipment (for agricultural use).

(l) **Examples not exhaustive.** Activities and items enumerated in this Section as examples and illustrations are not intended to be exclusive or exhaustive.

(m) **Purchases of taxable personal property or services by a contractor.** Purchases of taxable personal property or services by a contractor, as defined by 68 O.S. § 1352, are taxable to the contractor. A contractor who performs improvements to real property for a farmer may **not** purchase the tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to a farmer. However, sales of materials, supplies, and equipment may be made exempt from sales tax to any person who has contracted to construct facilities which are or will be **used directly** in the production of any livestock. For purposes of this subsection, **"used directly in the production of any livestock"** includes

facilities used in the production and storage of feed for livestock owned by the permit holder. To receive the exemption, the contractor must follow the applicable requirements of Section 710:65-13-17.

(n) **The exemption as it pertains to horses, ranching, and ranches.**

(1) The exemption is allowed only to those persons breeding or raising horses for marketing.

(2) The exemption is not extended to persons who own horses for personal use or who are solely engaged in activities such as boarding horses, giving riding lessons, or providing horses for recreational riding.

(o) **The exemption as it extends to feed and similar products for livestock, including horses.** The holder of an agricultural exemption permit may purchase generally recognized animal feeds, stock tonics, water purifying products, stock sprays, disinfectants, and other such agricultural supplies subject to the following limitations:

(1) The purchaser must obtain an Agricultural Permit; and

(2) The purchaser must follow the applicable requirements of Section 710:65-13-17.

PART 7. CHURCHES

710:65-13-40. Sales by churches; sales to churches

(a) **Sales "by" churches.** Sales by churches are not subject to sales tax when it can be said that such selling is noncompetitive with business establishments.

(1) The following are tests for determining that such selling is noncompetitive:

(A) The transactions are conducted by members of the church and not by any franchisee or licensee.

(B) All of the proceeds must go to the church organization.

(C) The transaction must not be a continuing one but rather should be held whether annually or a reasonably small number of times within a year. The test of reasonableness would be an administrative decision, to be made by the Commission.

(D) The reasonably ascertainable dominant motive of most transferees of the items sold must be the making of a contribution, with the transfer of property being merely incidental and secondary to the dominant purpose of making a gift to the church.

(2) In addition, there are these further considerations as guides to the resolution of questions raised by each individual situation:

(A) The nature of the particular item sold. All other things being equal, the decision as to candy might well be different from the decision as to refrigerators.

(B) The character of the particular sale, and the real practical effect upon putative competition. [**See:** 68 O.S. § 1356(7)]

(b) **Sales "to" churches.** Generally, sales made directly to a church are exempt from sales and use tax. Only sales purchased by the church, invoiced to the church, and paid for by funds or check directly from the church, will qualify for the exemption. A vendor wishing to be relieved of liability to collect the tax should follow the requirements of *OAC* 710:65-7-6 and 710:65-7-15.

(c) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor with whom a church has duly entered into a construction contract, or to any subcontractor to such construction contract, are exempt provided they are necessary for carrying out the contract. A vendor wishing to be relieved of liability to collect the tax should follow the requirements of subsection (c) of *OAC* 710:65-7-13.

(d) **Application process.** Application for exemption is made by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 Lincoln Blvd., Oklahoma City, OK 73194, a completed Form 13-16A, contained in Packet E available telephonically at (405) 521-3160 or online at www.tax.ok.gov along with supporting documentation ~~as follows:~~

~~(1) Letter from the Internal Revenue Service recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(3); and~~

~~(2) Documentation~~ which shows that the church consists of a body of believers which holds religious services and public notification of the place and time of those services such as a copy of a newspaper or yellow pages ad, newsletter or bulletin sent to regular attendees or distributed during a service.

PART 9. COMPUTERS; DATA PROCESSING; TELECOMMUNICATIONS

710:65-13-51. Exemption for sales of computers, data processing, telephonic and certain related equipment and services to a qualified aircraft maintenance or manufacturing facility

(a) Sales of computers, data processing equipment, related peripherals and telephone, telegraph or telecommunications service and equipment for use in a qualified aircraft maintenance or manufacturing facility are exempt from sales and use tax.

(1) For purposes of this exemption, **"qualified aircraft maintenance or manufacturing facility"** is defined as any new or expanded business which adds at least Two Hundred Fifty (250) new full-time-equivalent employees, as certified by the Employment Security Commission. In order to qualify for the exemption, the construction cost of the new or expanded facility must exceed Five Million Dollars ($5,000,000.00).

(2) For purposes of this exemption, the following will apply:

(A) **"Computer"** means an electronic device *that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.* [68 O.S.~~Supp.2003,~~ § 1352]

(B) **"Data processing equipment"** includes machines which perform work using programmed

instruction, and which singly or collectively have capabilities of memory, logic, arithmetic and/or communication and all machines used in support of machines possessing those capabilities;

(C) **"Related peripheral"** means input, output, processing, storage, software and communication facilities which are connected or related to a device in a system or network; and

(D) **"Telecommunications"** includes data transmission between a computing system and remotely located devices.

(3) The exemption shall include, but shall not be limited, to the following:

(A) Computer
(B) Terminal
(C) Modem
(D) Printer
(E) Disk Drive
(F) Video Display Terminal
(G) Memory
(H) Removable Disk
(I) Fixed Disk
(J) Bar Code Reader
(K) Key Punch
(L) CRT
(M) Plotter
(N) Card Reader/Punch
(O) Tape Drive
(P) Monitor
(Q) Software
(R) Telephone equipment
(S) Telephone service
(T) Telegraph equipment
(U) Telegraph service
(V) Dedicated lines

(4) The exemption shall not apply to the following:

(A) Supplies, such as:
(i) Diskettes
(ii) Tape
(iii) Paper
(iv) Pens
(v) Ribbons
(vi) Print Wheels
(vii) Media Storage
(viii) Storage Case
(ix) Cleaning Product
(x) Cleaning Kit
(xi) Template
(xii) Print-out Ruler
(xiii) Label

(B) Furniture, such as:
(i) Desk
(ii) Chair
(iii) Table
(iv) Rack
(v) Stand
(vi) Acoustical Protector
(vii) Shelving

(C) Accessories, such as:
(i) Surge Protector
(ii) Filter
(iii) Radiation Shield
(iv) Dust Cover
(v) Static Dissipator
(vi) Security System

(b) No exemption shall be granted if the qualified aircraft maintenance or manufacturing facility fails to file the documentation required below with the Commission within thirty-six (36) months of the date of purchase and the required certification issued by the Employment Security Commission within sixty (60) months of the date of first purchase.

(c) Pursuant to statute, the exemption for sales to an aircraft maintenance or manufacturing facility outlined above will be administered as a refund for state and local taxes paid by the aircraft maintenance or manufacturing facility to the vendor or, in the case of use tax, self-remitted to the State of Oklahoma.

(d) All persons who believe that they fall within the exemption provided shall file an Application/Intent to Qualify with the Commission. The Application/Intent to Qualify shall be on forms provided by the Commission and shall include, as attachments, specifications of the new or expanded facility, a complete description of the maintenance repair or manufacturing that will take place within the facility, and other information requested by the Commission. Upon receipt of the Application, the Application will be reviewed by the Commission for completeness and compliance with the exemption. A copy of the Application will be forwarded to the Employment Security Commission for establishment of the entity's base line employment. The applicant will be notified of any action taken regarding the Application by the Commission.

(e) For each purchase made, the entity who believes that it will be certified shall file the following documentation with the Commission on forms provided for that purpose by the Commission:

(1) Invoice indicating the amount of state and local taxes billed to the aircraft maintenance or manufacturing facility;

(2) Affidavit of the vendor of the tangible personal property that state and local sales tax reflected on that invoice has not been credited, rebated, or refunded to the aircraft maintenance or manufacturing facility, but rather, that the sales tax charged has been collected by the vendor and remitted to the Commission. Any number of invoices from the same vendor may be attached to one affidavit so long as the affidavit covers all invoices attached;

(3) All additional documentation required to be submitted by the Commission.

(f) At the option of the entity who believes it will be certified as a qualified aircraft maintenance or manufacturing facility, the documentation required in (e) of this Section can be filed monthly, quarterly, semi-annually, or annually. However, all documentation must be filed no later than thirty-six (36) months after the item is purchased. The Commission will review the documentation submitted and determine within thirty (30) days whether the refund claimed will be allowed. In the event that the claim is denied, the person who submitted

the documentation will be notified by the Commission as to the reason for denial. The entity submitting the documentation will similarly be notified that a claim has been approved.

(g) Each month, the Commission shall transfer from sales tax collected, to an account designated by the Commission, the estimated amount of claims approved the previous month.

(h) Upon completion of the new or expanded business and the addition of the employees as required by statute, the entity believing it falls within the exemption shall apply for certification on forms provided by the Commission. Each application for certification shall be reviewed by the Commission for the purpose of determining that the total cost of construction exceeded the sum of Five Million Dollars ($5,000,000.00) required by law. During such time that the Commission is reviewing the application for certification, the Commission will forward a copy of the application for certification to the Employment Security Commission who will review employees hired. Upon completion of the review by the Commission and the Employment Securities Commission, the Tax Commission will notify the applicant of the approval or denial of the certification requested.

(1) The applicant whose certification has been approved shall receive a refund in the amount not to exceed the total amount of state and local sales taxes paid and previously approved by the Commission. The qualified aircraft maintenance or manufacturing facility will also receive accrued interest upon the principal amount of the refund made as provided for by statute. [**See:** 68 O.S. §1357(16)]

(2) The following shall apply when a request for certification is denied:

(A) Any applicant whose request for certification is denied may, within sixty (60) days after the mailing of the denial by the Commission, file with the Commission a protest under oath, signed by the applicant or a duly authorized agent setting out:

(i) a statement of denial as determined by the Commission;

(ii) a statement of the applicant's disagreement with such denial, and

(iii) supporting documentation relied on by the taxpayer in support of certification.

(B) If an applicant fails to file a written protest within the sixty (60) days, then the denial, without further action of the Commission, shall become final and no appeal will be entertained.

(C) Applicants filing a protest to the denial of certification by the Commission shall be scheduled for a hearing en banc before the Commission for a date, time and place set by the Commission. Notice of the date, time and place will be given by mail at least ten (10) days prior to the hearing. The burden of proving that the denial of certification was erroneous is on the applicant. The applicant can present testimony, evidence and argument in support of the requested certification.

(D) The Commission will issue an order in each case. That order is directly appealable to the Supreme Court. The appeal must be perfected within thirty (30) days of the mailing of the order by filing a Petition in Error with the Clerk of the Supreme Court of the State of Oklahoma and by filing a designation of the record with the Secretary of the Commission at the same time the Petition in Error is filed. [NOTE: For further information the applicant should refer to the Rules of Practice and Procedure ~~Before~~before the ~~Oklahoma Tax Commission~~Office of the Administrative Law Judges (710:1-5-21 through 710:1-5-49). [**See:** 68 O.S. §§ 225, 1357.5, 1404.4]

710:65-13-54. Exemption for sales of machinery and equipment purchased and used by persons and establishments primarily engaged in computer services and data processing

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

(1) **"Computer"** means an electronic device *that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.* [68 O.S.~~Supp.2003,~~ § 1352]

(2) **"Data processing equipment"** means machines which perform work using programmed instruction, and which singly or collectively have capabilities of memory, logic, arithmetic or communication and all machines used in support of machines possessing those capabilities.

(3) **"Equipment"**, for purposes of this Section, means any independent device or tool, separate from any machinery, but essential to use of the machinery, or any sub-unit or sub-assembly comprising a component of any machinery or auxiliary, adjunct, or attachment, to parts of machinery. **"Equipment"** also specifically includes **"computers"** and **"data processing equipment"**, as defined in this Section.

(4) **"Machinery"**, for purposes of this Section, means major mechanical, electrical, or electronic machines or major components of such machines.

(5) **"Qualified purchaser"** means an establishment primarily engaged in computer services and data processing:

(A) Which is defined under Industrial Group Numbers 7372 (prepackaged software) and 7373 (computer integrated system design) of the Standard Industrial Classification (SIC) Manual, latest version, and which derives at least fifty percent (50%) of its annual gross revenues from the sale of a product or service to an out-of-state buyer or consumer, or

(B) Which is defined under Industrial Group Number 7374 (computer processing and data preparation processing services) of the SIC Manual, latest version, which derives at least eighty percent (80%) of their annual gross revenues from the sale of a product or service to an out-of-state buyer or consumer.

(6) **"Related peripheral"** means input, output, processing, storage, software, and communication facilities

which are connected or related to a device in a system or network.

(b) **General provisions.** The sale of machinery and equipment, including computers, data processing equipment, and related peripherals, to a qualified purchaser primarily engaged in computer services and data processing as defined by (a) of this Section is specifically exempt from the levy of sales or use tax. For purposes of determining "qualified purchaser" status, all sales to the federal government shall be considered sales to an out-of-state buyer or consumer.

(c) **Examples of exempt items.** Exempt items include, but are not limited to:

(1) Bar code reader
(2) Card reader/punch
(3) Computer
(4) CRT
(5) Disk drive
(6) Fixed Disk
(7) Key punch
(8) Memory
(9) Modem
(10) Monitor
(11) Plotter
(12) Printer
(13) Removable disk
(14) Software
(15) Tape drive
(16) Telegraph equipment
(17) Telegraph service
(18) Telephone equipment
(19) Telephone service
(20) Terminal
(21) Video display terminal

(d) **Examples of non-exempt items.** The exemption shall not apply to:

(1) Cleaning products
(2) Paper
(3) Pens
(4) Print-out labels

(e) **Application.** Application for exemption may be made by filing a signed, sworn affidavit with the Commission, stating:

(1) The name, address, and federal employer's identification number of the applicant and the name and title of the person signing for the applicant;

(2) A complete description of the computer services and data processing that will take place within the establishment;

(3) A statement of the establishment's annual gross revenues, and the percentage of the annual gross revenues derived from sales made to out-of-state buyers and consumers, determined for the most recently completed income tax year;

(4) A statement that the applicant is primarily engaged in the activities appropriate to SIC Code classification number 7372, 7373 or 7374, as applicable;

(5) The signature of a person authorized to bind the applicant, signed under penalty of perjury before a notary; and

(6) Such additional information as the Commission may require to confirm eligibility.

(f) **Review and determination.** Upon receipt of the application, the Commission will review and make a determination as to the applicant's eligibility. Upon approval, a letter certifying the exemption allowed the establishment will be forwarded to the applicant.

(g) **Issuance, scope, limitations of direct payment permit.** The letter of certification issued by the Commission will become effective, commencing July 1st following the ending date of the income tax year on which the statement required by subsection (e) was calculated, for a period of twelve (12) months, and may be renewed, subject to annual review and recertification of the applicant's eligibility by the Commission.

(h) **Denial of certification; cancellation, suspension, revocation of certification.** Certification may be denied, cancelled, suspended, or revoked by the Commission for non-compliance with the provisions of this Section, with applicable Oklahoma tax statutes, or for other good cause shown. Proceedings related to the cancellation or refusal to issue a certification pursuant to this Section shall be governed by 710:1-5-100 and 710:1-5-21 through ~~710:1-5-48~~ 710:1-5-49 of the permanent rules of the Commission.

PART 15. HAZARDOUS WASTES

710:65-13-80. Exemption for purchases to reduce hazardous waste

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

(1) **"Directly used or consumed in the process of treatment"** means either the tangible personal property is:

(A) **"Directly used"** in the step-by-step processes by which hazardous waste is treated. Any tangible personal property or any services which are only indirectly related to the process of treatment are not included; or

(B) **"Consumed"** as in destroyed, used up, or worn out to the degree or extent that such property cannot be repaired, reconditioned, or rendered fit for further use. **"Consumed"** does not mean or include mere obsolescence.

(2) **"Equipment"** means the implements used in the direct process of treatment.

(3) **"Hazardous waste"** means waste materials and by-products, either solid or liquid, which are to be discarded by the generator, and which are toxic to human, animal, aquatic or plant life and which are generated in such quantity that they cannot be safely disposed of in properly operated, state-approved sanitary landfills, waste or sewage treatment facilities. Hazardous waste may

include, but is not limited to, explosives, flammable liquids, spent acids, caustic solutions, poisons, containerized gases, sludge, tank bottoms containing heavy metallic ions, toxic organic chemicals, infectious materials, and materials such as paper, metal, cloth or wood which are contaminated with hazardous waste, and excludes domestic sewage. For purposes of the sales and use tax exemption, the term **"hazardous waste"** may include low-level radioactive waste.

(4) **"Incorporated into"** means directly used or consumed in the process of treatment.

(5) **"Machinery"** means mechanically, electrically, or electronically operated devices used for performing the tasks of remediation of hazardous waste.

(6) **"Other materials"** means other items of tangible personal property which are used in the direct process of treatment of hazardous waste, but which are not machinery, equipment, fuel, or chemicals. For purposes of this Section, electricity is included in the category "other materials".

(b) **Exemption limited to eligible, properly documented transactions.** Only purchases of machinery, equipment, fuel, and chemicals or other materials incorporated into and directly used or consumed in the process of treatment to substantially reduce the volume of harmful properties of hazardous waste at treatment facilities specifically permitted pursuant to the Hazardous Waste Management Act and operated at the place of waste generation, or facilities approved by the Department of Environmental Quality for the clean up of a site of contamination are exempt. Only purchases made by persons engaged in the process of treatment, invoiced to those persons, and paid for by such persons are exempt.

(c) **Application process.** Application for exemption is made by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 Lincoln Blvd., Oklahoma City, OK 73194, a completed Form 13-16-A, contained in Packet E available telephonically at (405) 521-3160 or online at www.tax.ok.gov along with supporting documentation as follows:

(1) A written description of the process in which the person will be engaged;

(2) Information regarding the permit or approval under which the person is operating;

(3) Documentation that any nonresident contractor or subcontractor is in compliance with the registration requirements found at 68 O.S. § 1701 et.seq.; and

(4) Such additional information as the Commission may require to confirm eligibility.

(d) **Review and determination.** Upon receipt of the application, the Commission will review and make a determination as to the applicant's eligibility. Upon approval, a letter certifying the exemption allowed will be forwarded to the applicant.

(e) **Denial of certification; cancellation, suspension, revocation of certification.** Certification may be denied, cancelled, suspended, or revoked by the Commission for non-compliance with the provisions of this Section, with applicable Oklahoma tax statutes, or for other good cause shown. Proceedings related to the cancellation or refusal to issue a certification pursuant to this Section shall be governed by 710:1-5-100 and 710:1-5-21 through ~~710:1-5-48~~710:1-5-49 of the permanent rules of the Commission.

(f) **Use of letter certifying eligibility for the exemption.** Persons claiming exemption under this Section should provide their vendors with a copy of the certification letter issued by the Commission and a signed statement that the purchase is being made exempt from sales tax. If purchases will be made from a vendor on a regular basis, the vendor may make subsequent sales without requiring proof of eligibility for each sale, providing the person to who the exempt sales are being made has agreed in writing to notify the vendor of any and all purchases which may be made to which the exemption would not apply. Vendors may accept the certification set out in this subsection in the same manner as any other letter certifying to a specific statutory exemption as set out in 710:65-7-6 and 710:65-7-15.

(g) **Limitations.** Any letter certifying an exemption issued under this Section is valid only for use by the addressee and is not transferable. The exemption may **not** be used by any other entity, even if that entity claims to be an agent, administrator, party to a contract or other relationship. Each entity desiring to obtain a letter certifying an exemption must make application in its own name.

PART 16. ELECTRONIC GOODS - REFITTING, REFURBISHING OR REPAIRING

710:65-13-85. Exemption for refitting, refurbishing, or repairing of consumer electronic goods

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

(1) **"Qualified devices"** means certain electronic consumer goods including but not limited to cell phones, compact disc players, personal computers, MP3 players, digital devices for the storage and retrieval of information through hard-wired or wireless computer or Internet connections.

(2) **"Qualified purchaser"** means an entity primarily engaged in the repair of consumer electronic goods which purchases from the original manufacturers qualified devices for refitting, refurbishing or repairing and subsequently sells these devices to either retail customers or to businesses primarily engaged in the sale of the enumerated qualified devices.

(3) **"Qualified purchases"** means only tangible personal property and services directly related to the activity of refitting, refurbishing, and repairing consumer electronic goods purchased from the original manufacturer of the qualified items for subsequent sale or resale. Qualified purchasers may not make exempt purchases for their regular consumer repair business, for other facets of their business or for the refitting, repairing, or refurbishing of consumer electronic goods purchased or acquired from sources other than the original manufacturer of the qualified devices.

(b) **General provisions.** Effective July 1, 2007, Section 1357(40) of Title 68 provides for a sales tax exemption for sales of tangible personal property or services to a business primarily engaged in the repair of consumer electronic goods if the devices are sold to the business by the original manufacturer of such devices and the devices are repaired, refitted, or refurbished for sale by the entity qualifying for the exemption directly to retail customers or if the devices are sold to another business entity for sale to retail customers.

(c) **Application.** Application for exemption may be made by filing a signed, sworn statement with the Taxpayer Assistance Division of the Oklahoma Tax Commission, which includes:

(1) The name, address, and federal employer's identification number of the applicant and the name and title of the person signing for the applicant;

(2) A complete description of the repair, refitting or refurbishing activities that will take place at the business location;

(3) A statement that applicant is primarily engaged in the repair of consumer electronic goods.

(4) Identification of the original manufacturers of the electronic consumer goods from which the applicant purchases qualified devices.

(5) A statement that applicant, once the consumer electronic goods are refitted, repaired or refurbished, will hold these devices for sale either directly to retail customers or to businesses regularly engaged in selling the qualified devices;

(6) The signature of a person authorized to bind the applicant, signed under penalty of perjury before a notary; and

(7) Copies of written documentation substantiating the purchase of the consumer electronic goods from the original manufacturers of those items along with such additional information as the Taxpayer Assistance Division may require to confirm eligibility.

(d) **Review and determination.** Upon receipt of the application, the Taxpayer Assistance Division will review and make a determination as to the applicant's eligibility. Upon approval, certification in the form of a letter or card, of the exemption allowed will be forwarded to the applicant.

(e) **Issuance, scope, limitations of exemption certification.** The certification issued by the Taxpayer Assistance Division will be effective for a period of twelve (12) months, and may be renewed, subject to annual review and recertification of the applicant's eligibility by the Taxpayer Assistance Division.

(f) **Denial of certification; cancellation, suspension, revocation of certification.** Certification may be denied, cancelled, suspended, or revoked by the Commission for non-compliance with the provisions of this Section, with applicable Oklahoma tax statutes, or for other good cause shown. Proceedings related to the cancellation or refusal to issue a certification pursuant to this Section shall be governed by 710:1-5-100 and 710:1-5-21 through ~~710:1-5-48~~710:1-5-49 of the permanent rules of the Commission.

PART 18. PRECIOUS METALS

710:65-13-95. Exemption for sales of gold, silver, platinum, palladium or other bullion items ~~for storage in a recognized depository facility~~

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

~~(1) **"Bullion"** means any precious metal, including, but not limited to, gold, silver, platinum and palladium, that is in such a state or condition that its value depends upon its precious metal content and not its form. The definition of "bullion" does not apply to fabricated metals that have been processed or manufactured for artistic use or as jewelry.~~

~~(2) **"Depository facility"** means an institution that accepts delivery of precious metals on behalf of the purchaser and provides storage of such precious metals, but shall not include financial institutions.~~

~~(3) **"Recognized depository facility"** means any facility which qualifies as a depository facility as defined in paragraph (2).~~

~~(b)~~ **General provisions.** ~~Sales~~The sale of gold, silver, platinum, palladium or other bullion items such as coins and bars and legal tender of any nation, which legal tender is sold according to its value as precious metal or as an investment is exempt~~ when stored within a recognized depository facility~~. "Bullion" for purposes of this Section means any precious metal, including, but not limited to, gold, silver, platinum and palladium, that is in such a state or condition that its value depends upon its precious metal content and not its form.

~~(c) **Exemption limited to eligible, properly documented transactions.** In order for such sales to be considered exempt from sales tax, a vendor, which is also a recognized depository facility, must provide its customer and retain a copy of documentation that the purchased bullion is to be kept for storage in the vendor's depository facility. Vendors which are not also acting as a recognized depository facility must maintain bills of lading or other documentation issued by the vendor or purchaser indicating that the bullion purchases are to be immediately transported and delivered to a "recognized depository facility" for storage.~~

(b) **Eligibility.** Transactions eligible for the exemption outlined in subsection (a) of this Section include:

(1) Sales of gold, silver, platinum or palladium in the form of coins, bars, ingots, blanks, rounds, and medallions.

(2) Sales of bullion that is or was at one time used as currency or a medium of exchange in the United States or a foreign country when:

(A) sold for an amount based on its value as a precious metal or

(B) sold or purchased as an investment.

(c) **Exclusions.** The exemption outlined in Subsection (a) does not apply to the following:

(1) Fabricated metals that have been processed or manufactured for artistic use or as jewelry,

(2) Jewelry or other accessory items such as belt buckles and money clips,
(3) Paper currency, and
(4) Bonds, certificates, and stocks.

PART 29. MANUFACTURING

710:65-13-153. Exemption for "qualified manufacturers"

(a) **Qualification.** Sales of construction materials to a qualified manufacturer to be consumed or incorporated in a new manufacturing facility or to expand an existing manufacturing facility are exempt from sales and use tax. For purposes of this exemption, sales made to a contractor or sub-contractor who has previously entered into a contractual relationship with a qualified manufacturer for construction or expansion of a manufacturing facility shall be considered sales made to the qualified manufacturer.

(1) **"Manufacturing facility"** for purposes of this exemption, means buildings and land improvements used in manufacturing as defined in Section 1352 of Title 68 of the Oklahoma Statutes, except that up to ten percent (10%) of the square feet of such building may be devoted to office to provide clerical support for the manufacturing operation and shall also mean building and land improvements used for the purpose of packing, packaging, repackaging, labeling or assembling for distribution to market, if at least seventy percent (70%) of the product is made in Oklahoma by the same company but at an off-site in-state manufacturing facility or facilities. Retail outlets will be included only if the retail outlet is operated in conjunction with and on the same site or premises as the manufacturing facility.

(2) **"Qualified manufacturer"** for purposes of this exemption, means:

(A) Any enterprise whose total cost of construction of a new or expanded facility exceeds the sum of Five Million Dollars ($5,000,000.00) and the new or expanded facility adds at least One Hundred (100) new full-time-equivalent employees, as certified by the Employment Security Commission, and such employees are maintained for a period of at least thirty-six (36) months, upon completion of the facility.

(B) If the cost of construction exceeds Ten Million Dollars ($10,000,000.00) and the combined cost of construction material, machinery, equipment, and other tangible personal property exceeds Fifty Million Dollars ($50,000,000.00), the required number of new full-time-equivalent employees to be added and maintained to be a **"qualified manufacturer"** is Seventy-five (75).

(C) If the total cost of construction exceeds the sum of Three Hundred Million Dollars ($300,000,000.00) the **"qualified manufacturer"** must maintain an employment level of a least 1,750 full time equivalent employees.

(3) **"Total costs of construction" defined.** For purposes of this Section, **"total cost of construction"** means and includes building and construction materials, and engineering and architectural fees or charges directly associated with the construction of a new or expanded facility, but shall not include attorney fees. For purposes of (a)(2)(C) of this Section the **"total cost of construction"** shall also include the cost of qualified depreciable property, as defined by Section 2357.4 of Title 68 of the Oklahoma Statutes, and labor services performed in the construction of a new or expanded facility.

(4) **The employment requirement.** The employment requirement described in this Section can be satisfied by a portion of the required new full-time-equivalent employees being employed at a manufacturing facility related to or supported by the new or expanded business, so long as both or all facilities are owned by the same person.

(b) **Limitations.**

(1) The exemption pertains only to sales of tangible personal property consumed or incorporated in the construction of a new manufacturing facility or the expansion of an existing facility made after June 1, 1988. The exemption applies to sales made to a contractor or sub-contractor to be consumed or incorporated in the construction of a new or expanded manufacturing facility pursuant to a contract with a qualified manufacturer as well as to sales made to a qualified manufacturer.

(2) The exemption applies only to tangible personal property that becomes a part of the facility or that is directly consumed in the construction process.

(3) No exemption shall be granted if the qualified manufacturer fails to file both the documentation required in (e)(1) of this Section and the required certification issued by the Employment Security Commission with the Commission.

(c) **Administration.** Pursuant to statute, the exemption for sales to a qualified manufacturer outlined in this Section will be administered as a refund for state and local taxes paid by the qualified manufacturer to the vendor or, in the case of use tax, self-remitted to the state of Oklahoma.

(d) **Application process.**

(1) **Application.** All persons who believe that they fall within the exemption provided shall file an Application/Intent to Qualify with the Commission. The Application/Intent to Qualify shall be on forms provided by the Commission and shall include, as attachments, specification of the new or expanded manufacturing facility a complete description of the product to be manufactured, and other information requested by the Commission.

(2) **Review.** Upon receipt of the Application, the Application will be reviewed by the Commission for completeness and compliance with the exemption. A copy of the application will be forwarded to the Employment Security Commission for establishment of the entities base line employment. The applicant will be notified of any action taken regarding the Application by the Commission.

(e) **Claims process.**

(1) **Records required for claim.**

(A) For each purchase made, the entity who believes that it will be certified as a qualified manufacturer shall file the following documentation with the Commission on forms provided for that purpose by the Commission:

(i) Invoice indicating the amount of state and local taxes billed to the qualified manufacturer;

(ii) Affidavit of the vendor of the construction materials reflected on the invoice that state and local sales tax reflected on that invoice has not been audited, rebated, or refunded to the qualified manufacturer but rather the sales tax charge has been collected to the vendor and remitted to the Commission. Any number of invoices from the same vendor may be attached to one affidavit so long as the affidavit covers all invoices attached;

(iii) All additional documentation required to be submitted by the Commission.

(B) In cases where the state and local sales tax was paid by a contractor or sub-contractor who has previously entered into a contract with a qualified manufacturer, the qualified manufacturer shall file with the Commission the following:

(i) Invoices indicating the amount of state and local sales taxes billed;

(ii) An affidavit from the contractor or sub-contractor who made the purchase of construction materials reflected on the invoice stating that the sales tax reflected on the attached invoice and claimed by the qualified manufacturer is based on state and local sales tax paid by the contractor or sub-contractor on construction materials to be consumed or incorporated in a construction of new or expanded manufacturing facility and that the amount of state and local sales tax claimed was paid by the contractor or sub-contractor to the vendor and no credit, refund or rebate has been claimed by the contractor or sub-contractor. Any number of invoices can be attached to an affidavit of a contractor or sub-contractor provided that all invoices attached reflect purchases made by that contractor or sub-contractor and are reflected in the affidavit;

(iii) Additional documentation required by the Commission.

(2) **Filing claims.** At the option of the entity who believes it will be certified as a qualified manufacturer, the documentation can be filed monthly, quarterly, semi-annually, or annually. Certification issued by the Employment Security Commission must be filed within thirty-six (36) months of the date of first purchase.

(3) **Review.** The Commission will review the documentation submitted and determine within thirty (30) days whether the refund claimed will be allowed. In the event that the claim is denied, the person who submitted the documentation will be notified by the Commission as to the reason for denial. The person who submitted the documentation will similarly be notified that a claim has been approved.

(f) **Fiscal procedure.** Each month, the Commission shall transfer from sales tax collected the estimated amount of claims approved by the Commission the previous month.

(g) **Certification process.**

(1) **Application review.** Upon completion of the new or expanded facility and the addition of the employees as required by statute, the person who believes he falls within the exemption shall apply for certification on forms provided by the Commission. Each application for certification shall be reviewed by the Commission for the purpose of determining that the thresholds required by law have been met. During such time that the Commission is reviewing the application for certification, the Commission will forward a copy of the application for certification to the Employment Security Commission who will review employees hired. Upon completion of the review by the Commission and the Employment Securities Commission, the Commission will notify the applicant of the approval or denial of the certification requested.

(2) **Approval.** The applicant whose certification has been approved shall receive a refund in the amount not to exceed the total amount of state and local sales taxes paid and previously approved by the Commission. The applicant will also receive accrued interest upon the principal amount of the refund made. [**See:** 68 O.S. § 1359.1(C)]

(3) **Assessment.** If at any time within thirty-six (36) months of the date certification is issued by the Oklahoma Employment Security Commission the number of full-time-equivalent employees drops below one hundred (100) such employees, any use or sales tax and interest previously refunded to the taxpayer will be assessed against the taxpayer receiving such refund and interest.

(4) **Denial of certification; protest procedure.**

(A) Any applicant whose request for certification is denied may, within sixty (60) days after the mailing of the denial by the Commission, file with the Commission a protest under oath, signed by the applicant or his duly authorized agent setting out:

(i) a statement of denial as determined by the Commission;

(ii) a statement of the applicant's disagreement with such denial; and

(iii) supporting documentation relied on by the taxpayer in support of certification.

(B) If an applicant fails to file a written protest within the sixty (60) days, then the denial, without further action of the Commission shall become final and no appeal will be entertained.

(C) Applicants filing a protest to the denial of certification by the Commission shall be scheduled for a hearing en banc before the Commission for a date, time and place set by the Commission. Notice of the date, time and place will be given by mail at least ten (10) days prior to the hearing.

(D) The burden of proving that the denial of certification was erroneous is on the applicants. The

applicant can present testimony, evidence and argument in support of the requested certification.

(E) The Commission will issue an order in each case. That order is directly appealable to the Supreme Court. The appeal must be perfected within thirty (30) days of the mailing of the order by filing a Petition in Error with the clerk of the Supreme Court of the State of Oklahoma and by filing a designation of the record with the Secretary of the Commission at the same time the Petition in Error is filed. [**See:** 68 O.S. § 225]

(F) For further information the applicant should refer to the Rules of Practice and Procedure ~~Before~~before the ~~Oklahoma Tax Commission~~Office of the Administrative Law Judges (710:1-5-21 through 710:1-5-49). [**See:** 68 O.S. §§ 1359.1, 1404.1]

710:65-13-155. Exemption for sales of tangible personal property to be consumed or incorporated in the construction or expansion of a qualified aircraft maintenance or manufacturing facility

(a) **Qualification.** Sales of tangible personal property to a qualified aircraft maintenance or manufacturing facility to be consumed or incorporated in a new facility or to expand an existing facility are exempt from sales and use tax. For purposes of this exemption, sales made to a contractor or sub-contractor who has previously entered into a contractual relationship with a qualified aircraft maintenance or manufacturing facility for construction or expansion of a facility shall be considered sales made to the qualified aircraft maintenance or manufacturing facility.

(1) For purposes of this exemption **"facility"** is defined as buildings and land improvements used in maintaining or manufacturing aircraft, except that up to ten percent (10%) of the square feet of such building may be devoted to office space used to provide clerical support for the manufacturing operation.

(2) For purposes of this exemption, **"aircraft maintenance or manufacturing facility"** is defined as any enterprise whose total cost of construction exceeds the sum of Five Million Dollars ($5,000,000.00) and which employs at least Two Hundred Fifty (250) new full-time-equivalent employees, as certified by the Employment Security Commission, upon completion of the facility.

(b) **Limitations.**

(1) The exemption pertains only to sales of tangible personal property made after the effective date of the statute. The exemption applies to sales of tangible personal property made to a contractor or sub-contractor to be consumed or incorporated in the construction of a new or expanded facility pursuant to a contract with an aircraft maintenance or manufacturing facility, as well as to sales of tangible personal property made to an aircraft maintenance or manufacturing facility.

(2) No exemption shall be granted if the aircraft maintenance or manufacturing facility fails to file both the documentation required below with the Commission within thirty-six (36) months of first purchase and the required certification issued by the Employment Security Commission within sixty (60) months of first purchase.

(c) **Administration.** Pursuant to statute, the exemption outlined above will be administered as a refund for state and local taxes paid to the vendor or, in the case of use tax, self-remitted to the State of Oklahoma.

(d) **Application process.**

(1) **Application.** All persons who believe that they fall within the exemption provided shall file an Application/Intent to Qualify with the Commission. The Application/Intent to Qualify shall be on forms provided by the Commission and shall include, as attachments, specifications of the new or expanded facility, a complete description of the maintenance, repair or manufacturing that will take place within the facility, and other information requested by the Commission.

(2) **Review.** Upon receipt of the Application, the Application will be reviewed by the Commission for completeness and compliance with the exemption. A copy of the Application will be forwarded to the Employment Security Commission for establishment of the entity's base line employment. The applicant will be notified of any action taken regarding the Application by the Commission.

(e) **Claims process.**

(1) **Records required for claim.**

(A) For each purchase made, the entity who believes that it will be certified shall file the following documentation with the Commission on forms provided for that purpose by the Commission:

(i) Invoice indicating the amount of state and local taxes billed to the aircraft maintenance or manufacturing facility;

(ii) Affidavit of the vendor of the tangible personal property that state and local sales tax reflected on that invoice has not been credited, rebated, or refunded to the aircraft maintenance or manufacturing facility, but rather, that the sales tax charged has been collected by the vendor and remitted to the Tax Commission. Any number of invoices from the same vendor may be attached to one affidavit so long as the affidavit covers all invoices attached;

(iii) All additional documentation required to be submitted by the Commission.

(B) In cases where the state and local sales tax was paid by a contractor or sub-contractor who has previously entered into a contract with an aircraft maintenance or manufacturing facility, the aircraft maintenance or manufacturing facility shall file with the Commission the following:

(i) Invoices indicating the amount of state and local sales taxes billed;

(ii) An affidavit from the contractor or sub-contractor who made the purchase of tangible personal property stating that the sales tax reflected on the attached invoice is based on state and local sales tax paid by the contractor or sub-contractor

on tangible personal property to be consumed or incorporated in a construction of new or expanded aircraft maintenance or manufacturing facility and that the amount of state and local sales tax claimed was paid by the contractor or sub-contractor to the vendor and no credit, refund or rebate has been claimed by the contractor or sub-contractor. Any number of invoices can be attached to an affidavit of a contractor or sub-contractor provided that all invoices attached reflect purchases made by that contractor or sub- contractor and are reflected in the affidavit;

(iii) Additional documentation required by the Commission.

(2) **Filing claims.** At the option of the entity who believes it will be certified as an aircraft maintenance or manufacturing facility, the documentation can be filed monthly, quarterly, semi-annually, or annually. However, all documentation must be filed no later than thirty-six (36) months after first purchase is made.

(3) **Review.** The Commission will review the documentation submitted and determine within thirty (30) days whether the refund claimed will be allowed. In the event that the claim is denied, the person who submitted the documentation will be notified by the Commission as to the reason for the denial. The person who submitted the documentation will similarly be notified that a claim has been approved.

(f) **Fiscal procedure.** Each month, the Commission shall transfer from sales tax collected, to an account designated by the Commission, the estimated amount of claims approved by the Commission the previous month.

(g) **Certification process.**

(1) **Application review.** Upon completion of the new or expanded facility and the addition of the employees as required by statute, the person who believes he falls within the exemption shall apply for certification on forms provided by the Commission. Each application for certification shall be reviewed by the Commission for the purpose of determining that the total costs of construction for such facility exceeded the sum of Five Million Dollars ($5,000,000.00) required by law. During such time that the Commission is reviewing the application for certification, the Commission will forward a copy of the application for certification to the Employment Security Commission who will review employees hired. Upon completion of the review by the Commission and the Employment Securities Commission, the Tax Commission will notify the applicant of the approval or denial of the certification requested.

(2) **Approval.** The applicant whose certification has been approved shall receive a refund in the amount not to exceed the total amount of state and local sales taxes paid and previously approved by the Commission. The applicant will also receive accrued interest upon the principal amount of the refund made as provided for by statute. [**See:** 68 O.S. §1357.5(C)]

(3) **Denial of certification; protest procedure.**

(A) Any applicant whose request for certification is denied may, within thirty (30) days after the mailing of the denial by the Commission, file with the Commission a protest under oath, signed by the applicant or a duly authorized agent setting out:

(i) a statement of denial as determined by the Commission;

(ii) a statement of the applicant's disagreement with such denial, and

(iii) supporting documentation relied on by the taxpayer in support of certification.

(B) If an applicant fails to file a written protest within the sixty (60) days, then the denial, without further action of the Commission, shall become final and no appeal will be entertained.

(C) Applicants filing a protest to the denial of certification by the Commission shall be scheduled for a hearing en banc before the Commission for a date, time and place set by the Commission. Notice of the date, time and place will be given by mail at least ten (10) days prior to the hearing.

(D) The burden of proving that the denial of certification was erroneous is on the applicant. The applicant can present testimony, evidence and argument in support of the requested certification.

(E) The Commission will issue an order in each case. That order is directly appealable to the Supreme Court. The appeal must be perfected within thirty (30) days of the mailing of the order by filing a Petition in Error with the Clerk of the Supreme Court of the State of Oklahoma and by filing a designation of the record with the Secretary of the Commission at the same time the Petition in Error is filed. [**See:** 68 O.S. §225]

(F) **Additional information.** For further information the applicant should refer to the Rules of Practice and Procedure ~~Before~~before the ~~Oklahoma Tax Commission~~ Office of the Administrative Law Judges (710:1-5-21 through 710:1-5-49). [**See:** 68 O.S. §§1357.5, 1404.4]

710:65-13-156. Exemption for "qualified distributor"

(a) **Qualification.** Sales of construction materials to a qualified distributor to be consumed or incorporated in a new distribution facility or to expand an existing distributing facility are exempt from sales and use tax. For purposes of this exemption, sales made to a contractor or sub-contractor who has previously entered into a contractual relationship with a qualified distributor for construction or expansion of a distribution facility shall be considered sales made to the qualified distributor.

(1) **"Distribution facility"** for purposes of this exemption, means buildings and land improvements used in the general wholesale distribution of groceries as defined or classified in the North American Industry Classification System (NAICS) under Industry No. 4244 and 4245, except that up to ten percent (10%) of the square feet of

such building may be devoted to office to provide clerical support for the distribution operation.

(2) **"Qualified distributor"** for purposes of this exemption, means an enterprise:

(A) Whose total cost of construction of a new or expanded facility exceeds the sum of Forty Million Dollars ($40,000,000) and the new or expanded facility adds at least fifty (50) new full-time-equivalent employees, as certified by the Employment Security Commission, and such employees are maintained for a period of at least thirty-six (36) months, upon completion of the facility.

(B) Which has at least seventy-five percent (75%) of its total sales to in-state customers or buyers.

(C) Which starts construction of its new or expanded facility on or after July 1, 2005 and before December 31, 2005.

(D) The exemption authorized pursuant to subsection (a) of this Section shall only become effective when the governing body of the municipality in which the enterprises is located approves a resolution expressing the municipality's support for the construction for such new or expanded facility. Upon approval by the municipality, the municipality shall forward a copy of such resolution to the Oklahoma Tax Commission.

(3) **"Total costs of construction" defined.** For purposes of this Section, **"total cost of construction"** means and includes building and construction materials, and engineering and architectural fees or charges directly associated with the construction of a new or expanded facility, but shall not include attorney fees. It *shall also include the cost of all parking, security and dock structures or facilities necessary to manage, process or secure vehicles used to receive and/or distribute groceries through such a facility.* For purposes of (a)(2)(A) of this Section the **"total cost of construction"** shall also include the cost of qualified depreciable property, as defined by Section 2357.4 of Title 68 of the Oklahoma Statutes, and labor services performed in the construction of a new or expanded facility.

(4) **The employment requirement.** The employment requirement described in this Section can be satisfied by a portion of the required new full-time-equivalent employees being employed at a distribution facility related to or supported by the new or expanded distribution facility, so long as both or all facilities are owned by the same person.

(b) **Limitations.**

(1) The exemption pertains only to sales of tangible personal property consumed or incorporated in the construction of a new manufacturing facility or the expansion of an existing facility made after June 1, 1988. The exemption applies to sales made to a contractor or sub-contractor to be consumed or incorporated in the construction of a new or expanded manufacturing facility pursuant to a contract with a qualified manufacturer as well as to sales made to a qualified manufacturer.

(2) The exemption applies only to tangible personal property that becomes a part of the facility or that is directly consumed in the construction process.

(3) No exemption shall be granted if the qualified distributor fails to file both the documentation required in (e)(1) of this Section and the required certification issued by the Employment Security Commission with the Commission.

(c) **Administration.** Pursuant to statute, the exemption for sales to a qualified distributor outlined in this Section will be administered as a refund for state and local taxes paid by the qualified distributor to the vendor or, in the case of use tax, self-remitted to the state of Oklahoma.

(d) **Application process.**

(1) **Application.** All persons who believe that they fall within the exemption provided shall file an Application/Intent to Qualify with the Commission. The Application/Intent to Qualify shall be on forms provided by the Commission and shall include, as attachments, specification of the new or expanded manufacturing facility a complete description of the facility to be expanded or newly built, and other information requested by the Commission.

(2) **Review.** Upon receipt of the Application, the Application will be reviewed by the Commission for completeness and compliance with the exemption. A copy of the application will be forwarded to the Employment Security Commission for establishment of the entities base line employment. The applicant will be notified of any action taken regarding the Application by the Commission.

(e) **Claims process.**

(1) **Records required for claim.**

(A) For each purchase made, the entity who believes that it will be certified as a qualified distributor shall file the following documentation with the Commission on forms provided for that purpose by the Commission:

(i) Invoice indicating the amount of state and local taxes billed to the qualified distributor;

(ii) Affidavit of the vendor of the construction materials reflected on the invoice that state and local sales tax reflected on that invoice has not been audited, rebated, or refunded to the qualified manufacturer but rather the sales tax charge has been collected to the vendor and remitted to the Commission. Any number of invoices from the same vendor may be attached to one affidavit so long as the affidavit covers all invoices attached;

(iii) All additional documentation required to be submitted by the Commission.

(B) In cases where the state and local sales tax was paid by a contractor or sub-contractor who has previously entered into a contract with a qualified distributor, the qualified distributor shall file with the Commission the following:

(i) Invoices indicating the amount of state and local sales taxes billed;

(ii) An affidavit from the contractor or sub-contractor who made the purchase of construction materials reflected on the invoice stating that the sales tax reflected on the attached invoice and claimed by the qualified distributor is based on state and local sales tax paid by the contractor or sub-contractor on construction materials to be consumed or incorporated in a construction of new or expanded distribution facility and that the amount of state and local sales tax claimed was paid by the contractor or sub-contractor to the vendor and no credit, refund or rebate has been claimed by the contractor or sub-contractor. Any number of invoices can be attached to an affidavit of a contractor or sub-contractor provided that all invoices attached reflect purchases made by that contractor or sub-contractor and are reflected in the affidavit;

(iii) Additional documentation required by the Commission.

(2) **Filing claims.** At the option of the entity who believes it will be certified as a qualified manufacturer, the documentation can be filed monthly, quarterly, semi-annually, or annually. Certification issued by the Employment Security Commission must be filed within thirty-six (36) months of the date of first purchase.

(3) **Review.** The Commission will review the documentation submitted and determine within thirty (30) days whether the refund claimed will be allowed. In the event that the claim is denied, the person who submitted the documentation will be notified by the Commission as to the reason for denial. The person who submitted the documentation will similarly be notified that a claim has been approved.

(f) **Fiscal procedure.** Each month, the Commission shall transfer from sales tax collected the estimated amount of claims approved by the Commission the previous month.

(g) **Certification process.**

(1) **Application review.** Upon completion of the new or expanded distribution facility and the addition of the employees as required by statute, the person who believes he falls within the exemption shall apply for certification on forms provided by the Commission. Each application for certification shall be reviewed by the Commission for the purpose of determining that the thresholds required by law have been met. During such time that the Commission is reviewing the application for certification, the Commission will forward a copy of the application for certification to the Employment Security Commission who will review employees hired. Upon completion of the review by the Tax Commission and the Employment Securities Commission, the Tax Commission will notify the applicant of the approval or denial of the certification requested.

(2) **Approval.** The applicant whose certification has been approved shall receive a refund in the amount not to exceed the total amount of state and local sales taxes paid and previously approved by the Tax Commission. The applicant will also receive accrued interest upon the principal amount of the refund made. Provided, no claim for refund shall be filed by a qualified distributor before July 1, 2006. [**See:** 68 O.S. §§1359.1(C)]

(3) **Assessment.** If at any time within thirty-six (36) months of the date certification is issued by the Oklahoma Employment Security Commission the number of full-time-equivalent employees drops below fifty (50) such employees, any use or sales tax and interest previously refunded to the taxpayer will be assessed against the taxpayer receiving such refund and interest.

(4) **Denial of certification; protest procedure.**

(A) Any applicant whose request for certification is denied may, within sixty (60) days after the mailing of the denial by the Commission, file with the Commission a protest under oath, signed by the applicant or his duly authorized agent setting out:

(i) a statement of denial as determined by the Commission;

(ii) a statement of the applicant's disagreement with such denial; and

(iii) supporting documentation relied on by the taxpayer in support of certification.

(B) If an applicant fails to file a written protest within the sixty (60) days, then the denial, without further action of the Commission shall become final and no appeal will be entertained.

(C) Applicants filing a protest to the denial of certification by the Commission shall be scheduled for a hearing en banc before the Commission for a date, time and place set by the Commission. Notice of the date, time and place will be given by mail at least ten (10) days prior to the hearing.

(D) The burden of proving that the denial of certification was erroneous is on the applicants. The applicant can present testimony, evidence and argument in support of the requested certification.

(E) The Commission will issue an order in each case. That order is directly appealable to the Supreme Court. [**See:** 68 O. S. § 225]

(F) For further information the applicant should refer to the Rules of Practice and Procedure ~~Before~~before the ~~Oklahoma Tax Commission~~Office of the Administrative Law Judges (710:1-5-21 through 710:1-5-49). [**See:** 68 O.S. §§ 1359.1, 1404.1]

PART 31. MEDICINE, MEDICAL APPLIANCES, AND HEALTH CARE ENTITIES AND ACTIVITIES

710:65-13-171. Sales of prosthetic devices to individuals

(a) **General provisions.** Sales of prosthetic devices to an individual for use by such individual ~~is~~are exempt from sales tax.

(b) Applicable definitions. For purposes of this Section:

(1) **"Prosthetic device"** means a replacement, corrective or supportive device, including repair and replacement parts for same, worn on or in the body to:

(A) Artificially replace a missing portion of the body;

(B) Prevent or correct physical deformity or malfunction; or,

(C) Support a weak or deformed portion of the body.

(2) **"Prosthetic device"** does **not** include corrective eye glasses, contact lenses, or hearing aids. A non-exhaustive list of prosthetic devices is set forth in 710:65-13-173(e).

(3) **"Use by that individual"** means usage for the purposes and in a manner for which the device was designed and intended.

(c) **Medicare and ~~medicaid~~Medicaid recipients.** Eye glasses, contact lenses, and hearing aids are considered items of "medical equipment", and if their cost will be reimbursed by Medicare or Medicaid pursuant to the terms set out in 710:65-13-173, the sale is tax exempt.

PART 35. NEWSPAPERS; PERIODICALS; PROGRAMS; MEDIA

710:65-13-194. Exemption for sales of tangible personal property and services to a motion picture or television production company to be used or consumed in connection with an eligible production

(a) **General provisions.** The sale of tangible personal property and services to a motion picture or television production company are exempt from sales and use taxes in Oklahoma, if used or consumed in connection with an eligible production.

(b) **Definitions.** Pursuant to 68 O.S. §1357(23), **"Eligible production"** means *a documentary, special, music video, or a television commercial or television program that will serve as a pilot for or be a segment of an ongoing dramatic or situation comedy series, filmed or taped for network or national or regional syndication; or a feature-length motion picture intended for theatrical release or for network or national or regional syndication or broadcast.* **"Qualified purchaser"** means a motion picture or television production company making purchases of tangible personal property and services for use in producing an eligible production, which has received an exemption letter for its eligible production.

(c) **Examples of exempt items.** Items that may be purchased exempt from sales tax by a qualified purchaser include, but are not limited to:

(1) Accommodations and meals.

(2) Production equipment purchases and rentals.

(3) Set construction and rigging materials.

(4) Production office equipment and supplies.

(5) Prop and wardrobe purchases and rentals.

(6) Utilities used by the production company on location and in the production office.

(d) **Application process.** Application for exemption is made by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 Lincoln Blvd. Oklahoma City, OK 73194, a completed Form 13-88, contained in Packet E available telephonically at (405) 521-3160 or online at www.tax.ok.gov.

(e) **Review and determination.** Upon receipt of the application, the Commission will review and make a determination as to the applicant's eligibility. Upon approval, a letter certifying that the exemption is allowed will be forwarded to the applicant.

(f) **Denial of certification; cancellation, suspension, revocation of certification.** Certification may be denied, cancelled, suspended, or revoked by the Commission for non-compliance with the provisions of this Section, with applicable Oklahoma tax statutes, or for other good cause shown. Proceedings related to the cancellation or refusal to issue an exemption letter pursuant to this Section shall be governed by 710:1-5-100 and 710:1-5-21 through ~~710:1-5-48~~710:1-5-49 of the permanent rules of the Commission.

(g) **Use of letter certifying eligibility for the exemption.** Persons claiming exemption under this Section should provide their vendors with a copy of the certification letter issued by the Commission and a signed statement that the purchase is being made exempt from sales tax. If purchases will be made from a vendor on a regular basis, the vendor may make subsequent sales without requiring proof of eligibility for each sale, providing the person to who the exempt sales are being made has agreed in writing to notify the vendor of any and all purchases which may be made to which the exemption would not apply. Vendors may accept the certification set out in this subsection in the same manner as any other letter or card certifying to a specific statutory exemption as set out in 710:65-7-6 and 710:65-7-15.

(h) **Limitations.** Any letter certifying an exemption issued under this Section is valid only for use by the addressee and is not transferable. The exemption may **not** be used by any other entity, even if that entity claims to be an agent, administrator, party to a contract or other relationship. Each entity desiring to obtain a letter certifying an exemption must make application in its own name.

PART 43. SOCIAL, CHARITABLE, AND CIVIC ORGANIZATIONS AND ACTIVITIES

710:65-13-348. Limited exemption for qualified neighborhood watch organizations

(a) **Qualification for exemption.** Effective July 1, 2005, the first $2,000 of each calendar year's sales of tangible personal property or services, to, by, or for the benefit of a qualified neighborhood watch organization that is endorsed or supported by or working directly with a law enforcement agency with jurisdiction in the area in which the neighborhood watch organization is located are exempt from sales tax. For purposes of this exemption **"qualified neighborhood watch organization"** *means an organization that is a not-for-profit corporation under the laws of the State of Oklahoma that was created to help prevent criminal activity in an area through community involvement and interaction with local law enforcement and which is one of the first two thousand organizations which makes application to the Oklahoma Tax Commission for the exemption after the effective date of the act.*

(b) **Application process.** Only the first two thousand applications received by the Oklahoma Tax Commission are eligible for exemption. Application for exemption is made by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, OK 73194, a completed Form 13-16-A, contained in Packet E, available telephonically at (405) 521-3160 or online at www.tax.ok.gov along with supporting documentation as follows:

(1) Documentation showing that the organization is a not-for profit corporation under the laws of Oklahoma established to help prevent criminal activity in a specific area through community involvement and interaction with local law enforcement, as may be evidenced by copies of one or more of the following:

(A) Articles of incorporation;

(B) By-laws;

(C) Other documents that show the intent of the incorporators at the time of incorporation.

(2) Documentation showing that the organization is either endorsed, supported by or working directly with a law enforcement agency that has jurisdiction in the area where the neighborhood watch is located. Documentation may consist of membership lists, notices or minutes of meetings or letters from the applicable law enforcement agencies concerning their support, endorsement or involvement with the organization.

(3) A description of the boundaries of the area in which the neighborhood watch organization is located.

(4) The name and address of the person representing the organization to whom the exemption card will be mailed and who will be responsible for keeping track of the sales made to, by, or for the benefit of the organization so that the annual limit of $2,000 will not be exceeded by the organization.

(c) **Exemption limited to eligible, properly-documented transactions.** Only the first $2,000 of either sales to, by or on behalf of the organization are exempt. The organization must keep accurate records to enable it to properly document the exemption. The exemption documentation that vendors are required to obtain on purchases to, or for the benefit of the organization is set out in 710:65-7-17.

(d) **Purchases by contractors.** Purchases of tangible personal property or services by a contractor, as defined by 68 O.S. § 1352, are taxable to the contractor. A contractor who performs improvements to real property for organizations which qualify for the exemption from sales tax on their purchases described in this Section may **not** purchase tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to the qualified organizations.

(e) **Review and determination.** Upon receipt of the application, the Commission will review and make a determination as to the applicant's eligibility. Upon approval, an exemption card will be sent to the applicant.

(f) **Denial of exemption; cancellation, suspension, revocation of exemption card.** The exemption may be denied, and the exemption card cancelled, suspended, or revoked by the Commission for non-compliance with the provisions of this Section, with applicable Oklahoma tax statutes, or for other good cause shown. Proceedings related to the cancellation or refusal to issue a certification pursuant to this Section shall be governed by 710:1-5-100 and 710:1-5-21 through ~~710:1-5-48~~710:1-5-49 of the permanent rules of the Commission.

SUBCHAPTER 19. SPECIFIC APPLICATIONS AND EXAMPLES

PART 1. "A"

710:65-19-9. Antiques, works of art, and artists

(a) Sales of antiques and works of art are sales taxable, without deductions for trade-in values or expenses of any kind. Vendors regularly engaged in the business of selling antiques or works of art should collect, report and remit sales tax, regardless of the infrequency of the sales.

(b) Sales of curios, antiques, art work, ~~coins,~~ postage stamps and like articles to art collectors, philatelists, ~~numismatists~~ or other persons who purchase such items for use or storage and not for immediate resale are sales subject to tax.

(c) Artists are consumer users of all tangible personal property used to create a painting, statue, figurine, or other piece of tangible personal property. If an artist is hired to create a work of art to custom order, the artist is performing a service and the amounts received by the artist for rendering this service are not taxable. If the artist has an existing work of art, or if the artist creates a piece of art work for speculation, the sale of the piece of art is subject to sales tax without any deduction for the cost of the materials used.

PART 5. "C"

710:65-19-50. Coins and bullion [REVOKED]

~~Coins or currency exchanged in the open market at the current exchange rate are not subject to sales tax. However, with the exception of *OAC* 710:65-13-95 the following transactions are subject to Oklahoma sales tax:~~

~~(1) Coins, commemorative or otherwise, purchased at rates not reflecting actual currency value (as for numismatic or coin collecting purposes or where the precious metal content of the coins determine their value).~~

~~(2) Sales of bullion.~~

~~(3) Sales of gold and silver commodity contracts where delivery of the commodity is taken in Oklahoma. [**See:** 68 O.S. §§1352, 1354]~~

710:65-19-58. Cotton gins [REVOKED]

~~Cotton gin machinery and equipment used in separating lint from seed, in cleaning, conditioning and baling, and the equipment used to carry the cotton lint and seed, from step to step in the ginning process may be purchased exempt from~~

~~tax. The blower which discharges the seed from the gin, the conveyor equipment used in unloading seed cotton and putting it into storage and moving cotton seed from the gin to storage and from storage into transport equipment are subject to tax. Other materials which are subject to tax are building materials used in the construction of storage facilities for seed cotton and cotton seed.~~

710:65-19-61. Collections and collectibles

Sales of stamps and currency at face value are not taxable. Sales of stamps and currency which do not meet the exemption requirements of OAC 710:65-13-95 for consideration in excess of face value are taxable.

PART 11. "F"

710:65-19-105. Sales by banks, savings and loan associations, credit unions and other financial institutions

(a) Financial institutions are primarily engaged in providing nontaxable services. Such services include charges to customers for cashier's checks, money orders, traveler's checks, checking accounts and the use of safe deposit boxes.

(b) A financial institution shall obtain a sales tax permit and regularly file sales and use tax returns if it regularly has taxable gross receipts. Taxable gross receipts include sales of the following:

(1) Coin savings banks.

(2) Commemorative medals unless made from a precious metal that is in such a state or condition that its value depends upon its precious metal content and not its form.

(3) Collectors' coins or currency sold above face value which do not meet the requirements for exemption pursuant to OAC 710:65-13-95.

(4) ~~Gold and silver bullion.~~

~~(5)~~ Repossessed assets.

(~~6~~ 5) Meals and beverages in the institution's cafeteria.

(~~7~~ 6) Charges for providing parking space for motor vehicles.

(c) Financial institutions who only occasionally make sales of tangible personal property need not obtain a sales tax permit but must collect, report and remit sales tax on all sales of tangible personal property.

PART 15. "H"

710:65-19-142. Hospitals

(a) Hospitals, infirmaries, sanitariums, nursing homes, and like institutions are primarily engaged in the business of rendering services. They are not required to collect, report, and remit sales tax on gross receipts from meals, bandages, dressings, drugs, x-ray photographs or other tangible personal property when such items of tangible personal property are used in the rendering of a hospital service. This is true irrespective of whether or not such tangible items are billed separately to their patients.

(b) With the exception of drugs, excluding over-the-counter drugs, as outlined in 710:65-13-170, hospitals, infirmaries, and sanitariums are deemed to be the purchasers for use or consumption of all tangible personal property used in the rendering of their service, and the sellers of these items to hospitals, infirmaries or sanitariums are required to collect tax on sales of such property to hospitals, unless the hospital is owned or operated by the federal government, the State of Oklahoma, a city, county, public trust, or a federally-recognized Indian Tribe, in which case the exemption described at *OAC* 710:65-13-130 will apply. Hospitals, infirmaries or sanitariums, engaged in the administration of drugs to their patients, may purchase drugs, except for over-the-counter drugs, exempt from sales tax ~~if the purchaser holds a valid sales tax permit~~.

(c) When hospitals furnish meals to nurses, attendants and patients as a part of the service rendered, the hospitals are deemed to be the users or consumers of the food and beverages used in the preparation of these meals and the sellers of these items to the hospital are required to collect tax on the sales of such property.

(d) When privately owned hospitals operate cafeterias that serve meals to the public, they will be allowed to purchase all foodstuffs used to operate the cafeteria exempt from tax for resale with a valid sales tax permit. The hospitals will then be required to collect the sales tax on sales to their customers and report and remit same to the Commission each month. The hospitals will also be required to pay sales tax on the cost of all foodstuffs withdrawn from stock, which are used to feed patients.

(e) State, city or county hospitals who operate cafeterias that serve meals to the public, or who charge their employees, are also required to collect the sales tax on sales to their customers and report and remit same to the Commission each month.

PART 39. " T "

710:65-19-330. Telecommunications services

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

(1) ***"Air-to-ground radiotelephone service"*** *means a radio service, as that term is defined in 47 CFR 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.* [68 O.S.~~Supp.2003,~~ § 1354.30(A)(1)]

(2) **"Ancillary services"** *means services that are associated with or incidental to the provision of telecommunication services, including but not limited to "detailed telecommunications billing", "directory assistance", "vertical service", and "voice mail service".* [68 O.S. ~~Supp 2007~~ § 1354(A)(4)(d)]

(3) ***"Call-by-call basis"*** *means any method of charging for telecommunications services where the price is*

measured by individual calls. [68 O.S.~~Supp.2003,~~ § 1354.30(A)(2)]

(4) ***"Communications channel"*** *means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points*. [68 O.S.~~Supp.2003,~~ § 1354.30(A)(3)]

(5) ***"Customer"*** *means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunications service. **"Customer"** does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area*. [68 O.S.~~Supp.2003,~~ § 1354.30(A)(4)]

(6) ***"Customer channel termination point"*** *means the location where the customer either inputs or receives the communications*. [68 O.S.~~Supp.2003,~~ § 1354.30(A)(5)]

(7) ***"End user"*** *means the person who utilizes the telecommunications service. In the case of an entity, **"end user"** means the individual who utilizes the service on behalf of the entity*. [68 O.S.~~Supp.2003,~~ § 1354.30(A)(6)]

(8) ***"Home service provider"*** *means the same as that term is defined in Section 124(5) of Public Law 106-252, the Mobile Telecommunications Sourcing Act*. [68 O.S.~~Supp.2003,~~ § 1354.30(A)(7)]

(9) **"International telecommunications services" defined. "International telecommunications services"** means all telecommunications services that either (1) originate in this state and terminate outside of the United States or (2) originate outside of the United States and terminate in this state, where, in either instance, a service address of the telecommunications service is in this state.

(10) **Interstate and International "800 service"** means a "telecommunications service" that allows a caller to dial a toll-free number without incurring a charge for the call typically marked under the name "800", "855", "866", "877", and "888" toll-free calling, and any subsequent numbers designated by the Federal Communications Commission,

(11) **Interstate and International "900 service"** means an inbound toll "telecommunications service" purchased by a subscriber that allows the subscriber's customers to call into the subscriber's prerecorded announcement of live service typically marketed under the name "900" service and any subsequent numbers designated by the Federal Communications Commission. "900 service" does not include charges for collection services provided by the seller of the "telecommunications services" to the subscriber, or service or product sold by the subscriber to the subscriber's customer

(12) **"Interstate"** means a telecommunications service that originates in one state, territory or possession of the United States, and terminates in a different state, territory or possession of the United States.

(13) **"Intrastate"** means a telecommunications service that originates in one state, territory or possession of the United States, and terminates in the same state, territory or possession of the United States.

(14) **"Local exchange telecommunications services" defined. "Local exchange telecommunications services"** means the provision of each access line and each dial tone to a fixed location for sending and receiving service in the provider's local exchange network. Local exchange service includes, but is not limited to, all ordinary exchange and toll service, extra listings, joint-user service, customer access line charges, and auxiliary services (call waiting, call forwarding, etc.).

(15) ***"Mobile telecommunications service"*** *means the same as that term is defined in Section 124(5) of Public Law 106-252, the Mobile Telecommunications Sourcing Act*. [68 O.S.~~Supp.2007,~~ § 1354.30(A)(8)]

(16) ***"Paging service"*** means a "telecommunications service" that provides transmission of coded radio signals for the purpose of activating specific pagers; such transmissions may include messages and/or sounds.

(17) ***"Place of primary use"*** *means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, **"place of primary use"** must be within the licensed service area of the home service provider*. [68 O.S.~~Supp.2007,~~ § 1354.30(A)(9)]

(18) ***"Post-paid calling service"*** *means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to which a telephone number which is not associated with the origination or termination of the telecommunications service. A post-paid calling service includes a telecommunications service, except a prepaid wireless calling service, that would be a prepaid calling service except it is not exclusively a telecommunications service*. [68 O.S.~~Supp.2007,~~ § 1354.30(A)(10)]

(19) ***"Prepaid calling service"*** *means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount*. [68 O.S.~~Supp.2007,~~ § 1354.30(A)(11)]

(20) ***"Private communication service"*** *means a telecommunication service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels*. [68 O.S.~~Supp.2003,~~ § 1354.30(A)(13)]

(21) ***"Prepaid wireless calling services"*** *means a telecommunications wireless service that provides the*

right to utilize mobile wireless service as well as other nontelecommunicaton services, including the download of digital products delivered electronically, content and ancillary services, which must be paid for in advance that is sold in predetermined units or dollars of which the number declines with use in a known amount. [68 O.S. ~~Supp 2007~~ 1354.30(A)(12)]

(22) ***"Service address"*** *means:*

(A) *The location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid;*

(B) *If the location in subparagraph (A) of this paragraph is not known,* ***"service address"*** *means the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller; and,*

(C) *If the locations in subparagraphs (A) and (B) of this paragraph are not known,* ***"service address"*** *means the location of the customer's place of primary use*. [68 O.S.~~Supp.2007,~~ § 1354.30(A)(14)]

(23) **"Value-added non-voice services"** means a service in which computer applications are used, other than for purposes of transmission conveyance or routing, to act on the form, content, code or protocol of the information or data.

(b) **Sales tax levied on the sale of telecommunications services, ancillary services and telecommunications nonrecurring charges.** Sales tax is levied on the sale of telecommunications services regardless of the vendor of said service as follows:

(1) Intrastate, interstate and international telecommunications services sourced to this state in accordance with Section 710:65-18-5.

(2) Ancillary services.

(3) Telecommunications nonrecurring charges, which means an amount billed for the installation, connection, charge or initiation of telecommunication services received by a customer.

(c) **Transactions to which the tax is applicable.** Telecommunications services include:

(1) The electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points.

(2) The transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance or routing as voice-over Internet protocol services or is classified by the Federal Communications Commission as enhanced or value added.

(d) **Transactions to which the tax is not applicable.** Telecommunications services do not include:

(1) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where the purchaser's primary purpose for the underlying transaction is the processed data or information.

(2) The installation or maintenance of wiring or equipment on a customer's premises.

(3) Tangible personal property.

(4) Advertising, including but not limited to directory advertising.

(5) Billing and collection services provided to third parties.

(6) Regulatory assessments and charges, including charges to fund the Oklahoma Universal Service Fund, the Oklahoma Lifeline Fund and the Oklahoma High Cost Fund Internet access services.

(7) If charges for taxable telecommunications services are aggregated with and not separately stated from charges for nontaxable services or products, the nontaxable charges will be subject to taxation unless the provider can reasonably identify charges not subject to the tax, charge or fee from the provider's books and records kept in the regular course of business; Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance and routing of such services by the programming service provider. Radio and television audio and video programming services shall include, but not be limited to, cable service as defined in 47 U.S. C. 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 C.F.R. 20.3.

(8) Ancillary services.

(9) Digital products delivered electronically, including but not limited to, software, music video, reading materials or ring tones.

(e) **Transactions exempted from the telecommunications levy.** The following transactions are exempt from the telecommunications levy:

(1) Interstate and International "800 service".

(2) Interstate and International "900 service".

(3) Interstate and International "private communications service".

(4) Value-added non-voice services in which computer applications are used, other than for purposes of transmission, conveyance or routing, to act on the form, content, code or protocol of the information or data.

(5) Interstate and International telecommunication service which is:

(A) Rendered by a company for private use within its organization or

(B) Used, allocated, or distributed by a company to its affiliated group.

(6) Regulatory assessments and charges, including charges to fund the Oklahoma Universal Service Fund, the Oklahoma Lifeline Fund and the Oklahoma High Cost Fund.

(7) Telecommunications nonrecurring charges, including but not limited to the installation, connection, change

or initiation of telecommunications services which are not associated with a retail consumer sale.

(f) **Coin-operated telephone taxable.** Gross receipts from a coin-operated telephone are subject to sales tax.

(g) **Purchases of tangible personal property by persons providing telecommunications services.** Except as otherwise set out in this paragraph, persons engaged in the business of providing telecommunications services are the consumers of tangible personal property used in providing those services. Sales of such tangible personal property to persons providing telecommunications services are taxable. However, sales of wireless telecommunications equipment to a wireless telecommunications vendor, who subsequently transfers the equipment to a customer for no charge or for a discounted charge, in connection with the customer's purchase of new or continued wireless telecommunications service, ~~is~~ are exempt. 68 O.S. § 1357(26)

(h) **Access charges billed to customer.** Access charges billed to consumers of telecommunications services are taxable.

(i) Sales of telecommunications services shall be sourced as set out in Section 710:65-18-5.

(j) If charges for taxable telecommunications services are aggregated with and not separately stated from charges for nontaxable services or products, the nontaxable charges will be subject to taxation unless the provider can reasonably identify charges not subject to the tax, charge or fee from the provider's books and records kept in the regular course of business~~;~~.

PART 45. "W"

710:65-19-367. Water conditioning and water softeners

(a) Water conditioning companies (including all soft water companies) are vendors with respect to all tangible personal property sold, leased, or rented by them and must collect the sales tax on all such property unless the purchaser or user is entitled to claim exemption from the sales tax and furnished an exemption certification.

(b) For purposes of collection of the tax, the term **"water conditioner"** means all automatic softeners, softener tanks, exchange tanks, purifiers, chlorinators, or any other device or equipment, together with the minerals contained therein used to condition, purify, or soften water.

(c) Rented or leased water conditioners, including those leased with an option for purchase, or those otherwise furnished for a monthly or other periodic charge, ~~ar~~are subject to the sales tax on the amount charged. Such conditioners sold shall be subject to sales tax on the full selling price.

(d) Purchasers by a water conditioning or softening company of water conditioners, tanks, and other equipment to be sold or rented are not subject to tax.

(e) Purchases of all other equipment supplies, and materials not for resale, including salt or any other cleaning agent used to rejuvenate water tanks or the minerals therein, are subject to sales or use tax.

(f) When a customer is billed separately for materials used to alter or change plumbing to accommodate conditioning equipment, the sales tax shall be collected, reported and remitted on the gross receipts from such materials.

[OAR Docket #15-427; filed 6-10-15]

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

[OAR Docket #15-428]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 2. Cigarette Stamp Tax
Part 3. Delivery Sales
710:70-2-50. [REVOKED]
710:70-2-50.1 [NEW]
710:70-2-51. [AMENDED]
710:70-2-52. [REVOKED]
Subchapter 5. Excise on Tobacco Products
710:70-5-3. [AMENDED]
Subchapter 7. Cigarette and Tobacco Products Sales by Federally Recognized Indian Tribes and Nations
710:70-7-8. [AMENDED]
710:70-7-9. [AMENDED]
710:70-7-10. [AMENDED]
Subchapter 9. Reporting Required by the Prevention of Youth Access to Tobacco Act and the Master Settlement Agreement Complementary Act
710:70-9-4. [AMENDED]
710:70-9-5. [NEW]
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ANALYSIS:

Sections **710:70-2-50** [revoked], **710:70-2-50.1** [new] and **710:70-2-51** [amended] have been amended to reflect the provisions of Section 2 of House Bill 2361 [2014] which enacted a new section of law to be added to the Cigarette Stamp Tax Code regulating the sale and distribution of cigarettes from mailing, shipping or otherwise delivering cigarettes to any person in this state. [**68:317.9**]

Section **710:70-2-52** has been revoked consistent with Section 4 of House Bill 2361 [2014] which repealed Sections 317.2, 317.3, 317.4, 317.5, 317.6 and 317.7 of Title 68 relating to delivery sales of cigarettes.

Section **710:70-5-3** has been amended to require the electronic payment of tobacco products excise tax in order to facilitate the timely payment, allocation and apportionment of the tobacco tax revenues.

Sections **710:70-7-8** and **710:70-7-9** have been amended to strike obsolete tax rates and provide for the new unity cigarette and tobacco products tax rates applicable to compacts signed after July 1, 2013.

Section **710:70-7-10** has been amended, changing *Rules of Practice and Procedure before the Oklahoma Tax Commission* to *Rules of Practice and Procedure before the Office of the Administrative Law Judges* and also updating the internal cross-references.

Section **710:70-9-4** has been amended to implement the provision of Section 1 of House Bill 2363 [2014] which provides additional conditions upon which a nonparticipating manufacturer and its brands may be removed or excluded from the Oklahoma Directory of Certified Tobacco Manufacturers and Brands by the Attorney General. [**68:360.9**]

New Section **710:70-9-5** has been adopted in accordance with Section 2 of House Bill 2363 [2014] which requires wholesalers and distributors to report to the Attorney General and Tax Commission information relating to sales to retailers and wholesalers of cigarettes and roll-your own tobacco. [**68:360.10**]

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 2. CIGARETTE STAMP TAX

PART 3. DELIVERY SALES

710:70-2-50. Filing requirements for persons making "delivery sales of cigarettes" [REVOKED]

~~(a) **General.** Before delivering any cigarettes to purchasers, every person making delivery sales into Oklahoma, or mailing, shipping, or otherwise delivering cigarettes in connection with any such sales, must provide to the Oklahoma Tax Commission a written statement containing the following information:~~

~~(1) The name of the seller;~~

~~(2) The trade name of the seller;~~

~~(3) The address of the principal place of business of the seller; and,~~

~~(4) The address of any other place of business of the seller. [68 O.S. § 317.5(A)]~~

~~(b) **Monthly report of delivery sales required.** No later than the twentieth day of each calendar month, each person who has made a delivery sale, or mailed, shipped, or otherwise delivered cigarettes in connection with any such sale during the previous month, must make a memorandum report to the Oklahoma Tax Commission of the following information:~~

~~(1) The name of the purchaser;~~

~~(2) The brands of cigarettes sold; and,~~

~~(3) The quantity of cigarettes sold. [68 O.S. § 317.5(B)]~~

~~(c) **Alternative method of compliance with reporting requirement.** Any person who satisfies the requirements set out in 15 U.S.C. 376 shall be deemed to have met the reporting requirements set out in (b) of this Section. [68 O.S. § 317.5(C)]~~

~~(d) **Reports must be filed electronically.** All required reports must be filed electronically in the format prescribed by the Compliance Division.~~

710:70-2-50.1. Definitions

The following words and terms, when used in Part 3 of this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Cigarette" means:

(A) Any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains:

(i) any roll of tobacco wrapped in paper or in any substance not containing tobacco,

(ii) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette, or

(iii) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subparagraph (i) of this subparagraph.

(B) And includes "roll-your-own" (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this definition of "cigarette", nine one-hundredths (0.09) of an ounce of "roll-your-own" tobacco shall constitute one individual"cigarette". [37 O.S. § 600.22(4)]

"Distributor" or **"Wholesaler"** means and includes a person, firm or corporation organized and existing, or doing business, primarily to sell cigarettes to, and render service to retailers in the territory such person, firm or corporation chooses to serve, and that:

(A) purchases cigarettes directly from the manufacturer;

(B) at least seventy-five percent (75%) of whose gross sales are made at wholesale;

(C) handles goods in wholesale quantities and sells through salespersons, advertising and/or sales promotion devices;

(D) carries at all times at its principal place of business a representative stock of cigarettes for sale, and

(E) comes into the possession of cigarettes for the purpose of selling them to retailers or to persons outside or within the state who might resell or retail such cigarettes to consumers.

(F) In addition to the foregoing, and irrespective of the percentage or type of sales, the term **"wholesaler" or "distributor"** shall also include all purchasers of cigarettes making purchases directly from the manufacturer for distribution at wholesale or retail sale and this shall not affect the requirements relating to retail licenses. [68 O.S. § 301(3)]

"Retailer" means:

(A) A person who comes into the possession of cigarettes for the purpose of selling, or who sells them at retail, or

(B) A person, not coming within the classification of wholesaler, distributor and/or jobber as herein defined, having possession of more than one thousand cigarettes. [68 O.S. § 301(4)]

710:70-2-51. Requirements placed on vendors making delivery sales of cigarettes

~~(a) *No person shall mail, ship or otherwise deliver cigarettes in connection with a delivery sale unless, prior to the first delivery sale to such consumer, the person:*~~

~~(1) *Obtains from the prospective customer a certification which includes:*~~

~~(A) *Reliable confirmation that the purchaser is at least the legal minimum purchase age; and,*~~

~~(B) *A statement signed by the prospective purchaser, in writing and under penalty of perjury, which:*~~

~~(i) *Certifies the prospective purchaser's address and date of birth; and,*~~

~~(ii) *Confirms that the prospective purchaser understands:*~~

~~(I) *That signing another person's name to such certification is illegal;*~~

~~(II) *That sales of cigarettes to individuals under the legal minimum purchase age are illegal;*~~

~~(III) *That the purchase of cigarettes by individuals under the legal minimum purchase age is illegal under the laws of Oklahoma; and,*~~

~~(IV) *That the prospective consumer wants to receive mailings from a tobacco company;*~~

~~(2) *Makes a good faith effort to verify the information contained in the certification provided by the prospective purchaser pursuant to (a)(1) of this Section against a commercially available database or obtains a photocopy or other image of the valid, government issued identification, stating the date of birth or age of the individual placing the order;*~~

~~(3) *Provides to the prospective purchaser, via e-mail or other means, a notice which meets the requirements of (c) of this Section and requests confirmation that the delivery sale order was placed by the prospective purchaser; and,*~~

~~(4) *In the case of an order for cigarettes pursuant to an advertisement on the Internet, receives payment for the delivery sale from the prospective purchaser by a credit or debit card that has been issued in such purchaser's name or by check.*~~

~~(b) *Persons taking delivery sale orders may request that prospective purchasers provide their e-mail addresses.* [68 O.S. § 317.2]~~

~~(c) *The notice required under (a)(3) of this Section shall include:*~~

~~(1) *A prominent and clearly legible statement that cigarette sales to individuals below the legal minimum purchase age are illegal;*~~

~~(2) *A prominent and clearly legible statement that consists of one of the warnings set forth in Section 4(a)(1) of the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. § 1333(a)(1), rotated on a quarterly basis;*~~

~~(3) *A prominent and clearly legible statement that sales of cigarettes are restricted to those individuals who provide verifiable proof of age in accordance with (a)(1) of this Section; and,*~~

~~(4) *A prominent and clearly legible statement that cigarette sales are taxable under Section 301 et seq. of Title 68 of the Oklahoma Statutes, and an explanation of how such tax has been, or is to be, paid with respect to such delivery sale.* [68 O.S. § 317.3]~~

~~(d) *Each person who mails, ships or otherwise delivers cigarettes in connection with a delivery sale:*~~

~~(1) *Shall include as part of the shipping documents a clear and conspicuous statement providing as follows: "CIGARETTES: OKLAHOMA LAW PROHIBITS SHIPPING TO INDIVIDUALS UNDER THE AGE OF EIGHTEEN, AND REQUIRES THE PAYMENT OF ALL APPLICABLE TAXES";*~~

~~(2) *Shall use a method of mailing or shipping that obligates the delivery service to require:*~~

~~(A) *The purchaser placing the delivery sale, or another adult of legal minimum purchase age residing at the purchaser's address, to sign to accept delivery of the shipping container; and,*~~

~~(B) *Proof, in the form of a valid, government issued identification bearing a photograph of the individual who signs to accept delivery of the shipping container, demonstrating that such person is either the addressee or another adult of legal minimum purchase age residing at the purchaser's address, but such proof shall be required only if that individual appears to be under twenty-seven (27) years of age; and*~~

~~(3) *Shall provide to the delivery service retained to deliver such delivery sale evidence of full compliance with 710:70-2-7.*~~

~~(e) *If the person taking a purchase order for a delivery sale delivers the cigarettes without using a delivery service, such person shall comply with all requirements of this act applicable to a delivery service and shall be in violation of this act if it fails to comply with any such requirement.* [68 O.S. § 317.4]~~

(a) No person or entity engaged in the business of selling or distributing cigarettes, that is not a manufacturer, wholesaler, or distributor of cigarettes or other tobacco products licensed by the Oklahoma Tax Commission shall mail, ship or otherwise deliver cigarettes to any person in this state that is not:

(1) A distributor or wholesaler of cigarettes licensed by the Oklahoma Tax Commission under Section 304 of Title 68 of the Oklahoma Statutes;

(2) An export warehouse proprietor pursuant to Chapter 52 of the Internal Revenue Code or the operator of a customs bonded warehouse pursuant to 19 U.S.C., Section 1311 or 1555; or

(3) A person who is an officer, employee or agent of the United States government, this state or a department, agency, instrumentality or political subdivision of the United States or this state when the person is acting in accordance with the official duties of the person.

(b) It shall be illegal for any common or contract carrier to knowingly transport cigarettes to any person in this state reasonably believed by the carrier to be a person other than described in paragraph 1, 2 or 3 of subsection a of this section. For purposes of this subsection, cigarettes may be transported to a home or residence in this state by persons other than common and contract carriers in quantities that do not exceed one thousand cigarettes at any one time.

(c) Any cigarettes that are shipped or transported into this state in violation of this section shall be forfeited to the state and destroyed.

710:70-2-52. Payment of taxes due on delivery sales of cigarettes [REVOKED]

~~Any person accepting a purchase order for a delivery sale of cigarettes in Oklahoma shall collect and remit all taxes due on the cigarettes sold, except that cigarette excise tax need not be collected and remitted if proof has been obtained that the cigarette packages sold already bear the correct Oklahoma Cigarette Excise Tax Stamps, showing that the correct tax has previously been paid. [68 O.S. § 317.6]~~

SUBCHAPTER 5. EXCISE ON TOBACCO PRODUCTS

710:70-5-3. Minimum requirements of monthly tobacco products tax reports of licensed manufacturers, wholesalers or retailers

(a) Every licensed manufacturer and every wholesaler licensed by the Oklahoma Tax Commission, to possess, use or in any manner deal with tobacco products subject to the excise tax, upon which such tax has not been paid, and every retailer who receives tobacco products upon which excise tax has not been paid shall report, to the Oklahoma Tax Commission, all purchases and invoices of all such tobacco products and merchandise subject to such excise tax monthly, on the Monthly Tobacco Products Tax Report form prescribed by the Commission. Each monthly report shall include the following information:

(1) Name, business address and Tobacco License Number of the tax reporter;

(2) All purchases or deliveries, stated separately according to the dates of delivery in the State, of all tobacco products received, possessed, used or in any manner dealt with in the previous calendar month;

(3) Invoice numbers of all purchases or deliveries of such products for the previous calendar month;

(4) Name and business address of each consignee and consignor; and

(5) Copy of each invoice of all purchases or deliveries of such products for the previous month attached to the monthly report form. Copies of invoices submitted shall be subject to destruction upon completion of an office audit of the monthly report and shall not discharge the reporter from the statutory duty to maintain records and files of all such transactions. [**See:** 68 O.S. §201; 68 O.S. §401 et seq.]

(b) Monthly reports ~~due after October 31, 2011,~~ must be filed electronically in the format prescribed by the Commission and the tax remitted to the Tax Commission by electronic funds transfer.

(c) Copies of each invoice for sales of tobacco products made during the previous calendar month shall be attached to the monthly report form. If the number of invoices is voluminous, reporter may request and obtain authorization to submit a schedule of sales in lieu of copies of invoices.

SUBCHAPTER 7. CIGARETTE AND TOBACCO PRODUCTS SALES BY FEDERALLY RECOGNIZED INDIAN TRIBES AND NATIONS

710:70-7-8. Cigarette stamp tax ~~rates~~rate for sales by federally-recognized Indian tribes and nations

(a) ~~**Designation of rates.**~~ ~~Tax rates~~The tax rate set out in this Section ~~are~~is for packages of twenty (20) cigarettes. ~~Rates~~The rate for packages of twenty-five (25) cigarettes ~~are~~is Twenty-five percent (25%) greater than the ~~rates~~rate for the twenty-unit packages.

(b) ~~**Rates applicable to sales on Indian country by federally-recognized Indian tribes or nations, or their licensees.**~~ ~~Rates~~The New Unity Rate, applicable to cigarette sales made on the Indian country of a federally-recognized Indian tribe~~s~~ or nation~~s~~ by that tribe or nation or its licensee~~sare:~~is $1.03 per pack. The tax rate applies to compacts containing provisions requiring the filing of reports and payment of tax to the compacting tribe when reports and payments are made to the Oklahoma Tax Commission.

~~(1) **State/tribal rate.** The state/tribal rate is 51.50 cents per pack. The rate applies to compacts containing provisions requiring the filing of reports and payment of tax to the compacting tribe when reports and payments are made to the Tax Commission.~~

~~(2) **State/tribal border rate.** The state/tribal border rate is 25.75 cents per pack for any retailer located within twenty (20) miles of the state line between Oklahoma and Kansas or Oklahoma and Missouri. This rate applies to compacts containing provisions requiring the filing of reports and payment of tax to the compacting tribe when reports and payments are made to the Tax Commission.~~

~~(3) **New compact rate.** The new compact rate is 85.75 cents per pack. The terms **"new compact"** and **"new compact rate"** apply to compacts signed after January 1, 2003, which contain the provision that the rate will increase by an amount equal to any tax increase that becomes effective on or after January 1, 2004, and to sales made thereunder, unless the terms of subsection (b)(5) apply by specific compact provision.~~

~~(4) **Kansas border rate.** The Kansas border rate is 60.75 cents per pack. This rate applies to tribes' or licensees' locations close to the Kansas border, as designated by the terms of their "new" compacts.~~

~~(5) **Exception rate.** The "exception" rate is 5.75 cents per pack. This rate applies to sales made by tribes or their licensees under compacts, the terms of which are not applicable to the circumstances set out in (b)(1) through (b)(4) of this Section.~~

~~(6) **Noncompact rate for sales to tribal members.** The noncompact rate for sales made by tribes or nations without a compact or their licensees to members of their tribe or nation is 0.00 cents per pack. The packs must be stamped with black stamps issued by the Oklahoma Tax Commission.~~

~~(7) **Noncompact rate for sales to other than tribal members.** The noncompact rate for sales made by tribes or nations without a compact or their licensees to other than members of their tribe or nation is $1.03 per pack.~~

710:70-7-9. Tobacco products tax rates for sales by federally-recognized Indian tribes and nations

~~(a) **New compact rate.** The terms **"new compact"** and **"new compact rate"** apply to compacts signed after January 1, 2003, which contain the provision that the rate will increase by an amount equal to any tax increase that becomes effective on or after January 1, 2004, and to sales made thereunder, unless the terms of subsection (f) apply by specific compact provision:~~

~~(1) For little (Class A) cigars $0.02925 each.~~

~~(2) For all other (Class C) cigars: $0.0975 each.~~

~~(3) For smoking tobacco: Fifty percent (50%) of the Factory List Price.~~

~~(4) For chewing tobacco: Thirty seven and one half percent (37.5%) of the Factory List Price.~~

~~(b) **State/tribal rate.** The state/tribal rate applies to sales made by tribes or their licensees with compacts known as state/tribal which require reporting and payment to the tribe at the same time reporting and payment of tax is made to the Tax Commission.~~

~~(1) For little (Class A) cigars $0.18 each.~~

~~(2) For all other (Class C) cigars: $0.06 each.~~

~~(3) For smoking tobacco: Forty percent (40%) of the Factory List Price.~~

~~(4) For chewing tobacco: Thirty percent (30%) of the Factory List Price.~~

~~(c) **State/tribal border rate.** The state/tribal border rate applies to any retailer located within twenty (20) miles of the state line between Oklahoma and Kansas or Oklahoma and Missouri. This rate applies to sales made by tribes or their licensees with compacts known as state/tribal which require reporting and payment to the tribe at the same time reporting and payment of tax is made to the Tax Commission.~~

~~(1) For little (Class A) cigars $0.009 each.~~

~~(2) For all other (Class C) cigars: $0.03 each.~~

~~(3) For smoking tobacco: Twenty percent (20%) of the Factory List Price.~~

~~(4) For chewing tobacco: Fifteen percent (15%) of the Factory List Price.~~

~~(d) **Kansas border rate.** The Kansas border rates apply to tribes' or licensees' locations that are close to the Kansas border, as designated by the terms of their "new" compacts:~~

~~(1) For little (Class A) cigars: $0.00225 each.~~

~~(2) For all other (Class C) cigars: $0.0075 each.~~

~~(3) For smoking tobacco: Ten percent (10%) of the Factory List Price.~~

~~(4) For chewing tobacco: Seven and one half percent (7.5%) of the Factory List Price.~~

~~(e) **Texas border rate.** The Texas border rates apply to tribes' or licensees' locations that are close to the Texas border, as designated by the terms of their "new" compacts.~~

~~(1) Texas border rate prior to September 1, 2009:~~

~~(A) For little (Class A) cigars: $0.00225 each.~~

~~(B) For all other (Class C) cigars: $0.0075 each.~~

~~(C) For smoking tobacco: Fourteen point seven eight seven percent (14.787%) of the Factory List Price.~~

~~(D) For chewing tobacco: Twelve point two eight seven percent (12.287%) of the Factory List Price.~~

~~(2) Texas border rate on or after September 1, 2009 and ending on or before August 31, 2010:~~

~~(A) For little (Class A) cigars: $0.00225 each.~~

~~(B) For all other (Class C) cigars: $0.0075 each.~~

~~(C) For smoking tobacco: Twenty three point five nine percent (23.59%) of the Factory List Price.~~

~~(D) For chewing tobacco: Eighteen point five nine percent (18.59%) of the Factory List Price.~~

~~(3) Texas border rate on or after September 1, 2010 and ending on or before August 31, 2011:~~

~~(A) For little (Class A) cigars: $0.00225 each.~~

~~(B) For all other (Class C) cigars: $0.0075 each.~~

~~(C) For smoking tobacco: Twenty seven point three nine four percent (27.394%) of the Factory List Price.~~

~~(D) For chewing tobacco: Twenty four point eight nine four percent (24.894%) of the Factory List Price.~~

~~(4) Texas border rate on or after September 1, 2011 and ending on or before August 31, 2012:~~

~~(A) For little (Class A) cigars: $0.00225 each.~~

~~(B) For all other (Class C) cigars: $0.0075 each.~~

~~(C) For smoking tobacco: Forty one point one nine seven percent (41.197%) of the Factory List Price.~~

~~(D) For chewing tobacco: Thirty one point one nine seven percent (31.197%) of the Factory List Price.~~

~~(5) Texas border rate on or after September 1, 2012:~~

~~(A) For little (Class A) cigars: $0.00225 each.~~

~~(B) For all other (Class C) cigars: $0.0075 each.~~

~~(C) For smoking tobacco: Fifty percent (50%) of the Factory List Price.~~

~~(D) For chewing tobacco: Thirty seven point five percent (37.5%) of the Factory List Price.~~

~~(f) **Exception rate.** The "exception" rates apply to sales made by tribes' and licensees' locations specified by the terms of the tribes' new compact.~~

~~(1) For little (Class A) cigars: $0.00225 each.~~

~~(2) For all other (Class C) cigars: $0.0075 each.~~

~~(3) For smoking tobacco: Ten percent (10%) of the Factory List Price.~~

~~(4) For chewing tobacco: Seven and one-half percent (7.5%) of the Factory List Price.~~

~~(g) **Noncompact rate for sales to tribal members.** The noncompact rates for sales made by tribes or nations without a compact or their licensees to members of their tribe or nation are:~~

~~(1) For little (Class A) cigars: $0.00 each.~~

~~(2) For all other (Class C) cigars: $0.00 each.~~

~~(3) For smoking tobacco: Zero percent (0%) of the Factory List Price.~~

~~(4) For chewing tobacco: Zero percent (0%) of the Factory List Price.~~

~~(h) **Noncompact rate for sales to other than tribal members.** The noncompact rate for sales made by tribes or nations without a compact or their licensees to other than members of their tribe or nation are:~~

~~(1) For little (Class A) cigars: $0.036 each.~~

~~(2) For all other (Class C) cigars: $0.12 each.~~

~~(3) For smoking tobacco: Eighty percent (80%) of the Factory List Price.~~

~~(4) For chewing tobacco: Sixty percent (60%) of the Factory List Price.~~

The terms "New Unity Compact" and "New Unity Rate" apply to compacts signed after July 1, 2013, which contain the provision that the rate will increase by an amount equal to any tax increase that becomes effective on or after January 1, 2004, and to sales made thereunder:

(1) For little (class A) cigars: $0.036 each

(2) For all other (class C) cigars: $0.12 each

(3) For smoking tobacco: Eighty percent (80%) of the Factory List Price

(4) For chewing tobacco: Sixty percent (60%) of the Factory List Price

710:70-7-10. Calculation of probable demand for noncompacting federally recognized Indian tribes or nations

(a) **Purpose of rule:** The purpose of this rule is to provide the procedure necessary for the implementation of calculation of probable demand for Native American tax free stamps for each noncompacting tribe or nation resident in Oklahoma for cigarettes and other tobacco products, pursuant to 68 O.S. § 349.1., effective January 1, 2010.

(b) **Calculation of probable demand:** Probable demand shall be calculated in conformity with the requirements of 68 O.S. § 349.1.

(c) **Service of preliminary calculation of probable demand upon affected noncompacting tribes and nations:** Not less than seventy-five (75) calendar days prior to the first calendar day of each calendar year, the preliminary calculation of probable demand for cigarette and other tobacco products shall be served upon the governing authorities or other designated agent of each and every noncompacting tribe and nation, together with a copy of this Section. Service shall be deemed complete upon the date of placing said preliminary calculation in the first class mail, postage prepaid, addressed to the governing authorities or other designated agent of each and every noncompacting tribe or nation.

(d) **Service of objections/dispute of preliminary calculation of probable demand by affected noncompacting tribes and nations:** Within thirty (30) calendar days from the date of service of the preliminary calculation of probable demand, affected noncompacting tribes and nations may serve upon the Office of the General Counsel, Oklahoma Tax Commission, 120 North Robinson, Suite 2000 W, Oklahoma City, OK 73102-7801, any objections/dispute of the preliminary calculation of probable demand, together with any verifiable information in its possession regarding such probable demand, including, but not limited to, a verifiable record of previous sales to tribal members or other statistical evidence. Service shall be deemed complete upon placing of objections/dispute of the preliminary calculation of probable demand, together with supporting verifiable evidence in the first class mail, postage prepaid, addressed to the Office of the General Counsel, Oklahoma Tax Commission at the above address.

(e) **Failure to file objection/dispute of preliminary calculation of probable demand.** If, within thirty (30) calendar days from the date of service of the preliminary calculation of probable demand upon an affected tribe or nation, that tribe or nation has failed to file its objection/dispute to the preliminary calculation served upon it, that preliminary calculation shall become the final calculation, final and nonappealable.

(f) **Final calculation of probable demand.** If an affected tribe or nation timely files its objection/dispute to the preliminary calculation of probable demand for that affected tribe or nation and furnishes supporting verifiable information pursuant to (d) of this Section, said objection/dispute, together with supporting verifiable evidence shall be considered, and a final calculation of probable demand issued and served within fifteen (15) calendar days from the date of service of said objection/dispute. Service shall be deemed complete upon the date of placing said preliminary calculation in the first class mail, postage prepaid, addressed to the governing authorities or other designated agent of each and every noncompacting tribe or nation.

(g) **Timely filing of objections/dispute of final calculation of probable demand.** If, within fifteen (15) calendar days from the date of service of the final calculation of probable demand upon an affected tribe or nation, that tribe or nation has timely filed its objection/dispute to the final calculation served upon it, the matter of the final calculation of probable demand shall proceed as a protested matter, pursuant to the provisions of the *OAC* 710:1-5-21 through *OAC* ~~710:1-5-48~~710:1-5-49.

(h) **Final calculation of probable demand to be used while any timely protest and appeal of the final calculation of probable demand is pending.** If an affected tribe or nation files a timely objection/dispute to the final calculation served on it, cigarettes and other tobacco products may be obtained, on a monthly basis, with entitlement based upon 1/12th of the final calculated probable demand for cigarettes and other tobacco products. Provided, however, at the option of the affected tribe or nation, it may obtain cigarettes and other tobacco products

each month, based upon 1/12th of the final calculated probable demand, plus not more than an additional twenty five percent (25%) of 1/12th of the final calculated probable demand for cigarettes and other tobacco products. In the event an affected tribe or nation elects to obtain such an additional amount of untaxed cigarettes and other tobacco products, entitlement to request those additional amounts shall cease when the total of cigarettes and other tobacco products obtained in a calendar year equals the final calculation of probable demand for that calendar year.

(i) **Final determinations of the final calculated probable demand appealable pursuant to 68 O.S. § 225.** Final orders of the Oklahoma Tax Commission pursuant to 68 O.S. § 349.1 and this Section shall be appealable to the Oklahoma Supreme Court, as a matter of right, pursuant to 68 O.S. § 225.A.

SUBCHAPTER 9. REPORTING REQUIRED BY THE PREVENTION OF YOUTH ACCESS TO TOBACCO ACT AND THE MASTER SETTLEMENT AGREEMENT COMPLEMENTARY ACT

710:70-9-4. Quarterly escrow installments required from certain nonparticipating manufacturers pursuant to the Master Settlement Agreement Complementary Act

(a) **Quarterly escrow payments for certain nonparticipating manufacturers required.** The Oklahoma Tax Commission shall require a tobacco product manufacturer subject to the escrow requirements of 37 O.S. § 600.23, to make quarterly installments during the year in which the sales covered by the deposits are made when the Attorney General notifies the Tax Commission that:

(1) A nonparticipating manufacturer has not previously established and funded a qualified escrow fund in Oklahoma; or,

(2) A nonparticipating manufacturer has not made any escrow deposits for more than one year; or,

(3) A nonparticipating manufacturer has failed to pay any judgment awarded to the state, including any civil penalty; or,

(4) A nonparticipating manufacturer sells more than 2,000,000 sticks or 180,000 ounces of roll-your-own product during a quarter.

(b) **Quarterly escrow payments for all nonparticipating manufacturers may be required.** All nonparticipating manufacturers shall be required to make quarterly payments if, thirty (30) days prior to the beginning of any quarter, the Attorney General serves a written request upon the Tax Commission, requesting that quarterly payments be required. Such quarterly payments under this subsection shall be required for every quarter after such notice until such time as the Attorney General notifies the Tax Commission that quarterly payments, in his judgment, are no longer necessary to provide compliance with the escrow requirements of a nonparticipating manufacturer.

(c) **Deadlines.** Nonparticipating manufacturers required to make quarterly payments must do so as follows:

(1) Payments for sales occurring in the first quarter, January 1 through March 31, are due April 30 of the same year. The Attorney General's office must receive official notification of the payments no later than May 15 of the same year.

(2) Payments for sales occurring in the second quarter, April 1 through June 30, are due July 31 of the same year. The Attorney General's office must receive official notification of the payments no later than August 15 of the same year.

(3) Payments for sales occurring in the third quarter, July 1 through September 30, are due October 31 of the same year. The Attorney General's office must receive official notification of the payments no later than November 15 of the same year.

(4) Payments for sales occurring in the fourth quarter, October 1 through December 31, are due January 31 of the next year. The Attorney General's office must receive official notification of the payments no later than February 15 of the next year.

(d) ~~**Penalties.**~~**Grounds for removal of nonparticipating manufacturer from Oklahoma Directory of Certified Tobacco Manufacturers and Brands.** The nonparticipating manufacturer and its brands may be removed from the Oklahoma Directory of Certified Tobacco Manufacturers and Brands by the Attorney General if:

(1) Required quarterly escrow payments are not timely made in full; or,

(2) An outstanding final judgment, and interest thereon, for a violation of 37 O.S. §§600.21 through 600.23 has not been fully satisfied; or,

(3) The Attorney General is not timely notified that the quarterly escrow payments have been made in full; or,

(4) The Attorney General determines that the nonparticipating manufacturer has otherwise failed to comply with any requirement of the Master Settlement Agreement Complementary Act~~.~~

(e) **Additional grounds for removal or exclusion from the Directory.** In addition to the grounds contained in subsection (d) of this Section, a nonparticipating manufacturer and its brands may be removed or not included in the Oklahoma Directory of Certified Tobacco Manufacturers and Brands by the Attorney General if the manufacturer:

(1) Does not certify it is subject to, without immunity, the Master Settlement Agreement Complementary Act and the Prevention of Youth Access to Tobacco Act; or

(2) Fails to disclose that a state or federal government has brought an action in compliance with any state or federal law, regulating the sale and or distribution of tobacco products, including the escrow statute of another state; or

(3) Fails to sell only through an Oklahoma-licensed wholesaler any tobacco product sold into the state or fails to provide monthly PACT Act reports to the Oklahoma Tax Commission and the Oklahoma Attorney General for sales into the state.

710:70-9-5. Electronic tobacco sales report

(a) Each wholesaler or distributor shall report information relating to sales of cigarettes and roll-your- own tobacco to each retailer and wholesaler. The required information shall be reported to the Attorney General and the Oklahoma Tax Commission, electronically, no later than the twentieth day of each calendar month for the preceding calendar month's activity. The report is to contain the following information:

(1) The name and address of the outlet location of each retailer and wholesaler to which the wholesaler or distributor delivered cigarettes, including the city and zip code;

(2) Monthly sales, including the number of individual cigarettes, by brand name, made to:

(A) Wholesalers and retailers in packages bearing the excise tax stamp of the State of Oklahoma;

(B) Tribal retailers of compacting Tribes, in packages bearing the joint "unity rate" tax stamp purchased from the Oklahoma Tax Commission;

(C) Wholesalers, retailers or consumers located outside the State of Oklahoma in packages not bearing the excise tax stamp of the State of Oklahoma;

(D) Noncompacting Tribes located in the State of Oklahoma that bear the black tax-free stamp for sales to tribal members of a noncompacting Tribe;

(3) Monthly sales of individual containers of roll-your-own tobacco products, by brand name and by weight, upon which the state excise or "unity" tax has been paid; and

(4) Monthly sales of individual containers of roll-your-own tobacco products, by brand name and by weight, made to:

(A) Wholesalers, retailers or consumers located outside the State of Oklahoma on which the state excise tax has not been paid;

(B) Noncompacting Tribes located within the State of Oklahoma.

(b) All monthly net sales reports provided for in subsection (a) of this Section shall include the invoice number and invoice date of cigarettes sold, distributed or shipped into Oklahoma. The reports shall also include the beginning and ending inventory for each type of stamp held during the reporting period.

(c) The report required by this Section if timely filed shall be considered as meeting the reporting requirements of Section 360.6 of Title 68 of the Oklahoma Statutes.

[OAR Docket #15-428; filed 6-10-15]

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

[OAR Docket #15-429]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Oklahoma Quality Jobs Program
710:85-1-8 [AMENDED]
710:85-1-13 [AMENDED]
Subchapter 3. Saving Quality Jobs Program
Part 3. Premium Payment Program
710:85-3-34 [AMENDED]
Part 5. High Impact Projects
710:85-3-57 [AMENDED]
Subchapter 5. Small Employer Quality Jobs Program
710:85-5-11 [AMENDED]
Subchapter 7. Oklahoma Film Enhancement Rebate Program
710:85-7-3 [AMENDED]
Subchapter 9. Oklahoma Quality Investment Act
710:85-9-4 [AMENDED]
Subchapter 11. 21st Century Quality Jobs Program
710:85-11-7 [AMENDED]
AUTHORITY:
Oklahoma Tax Commission; 68 O.S. § 203
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n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Section **710:85-7-3** has been amended to comply with Section 14 of Senate Bill 318 [2009] which requires a production company to either have already filed or will file any Oklahoma tax return or tax document which may be required by law in order to be eligible for a rebate payment. **[68:3624]**

Sections **710:85-1-8, 710:85-1-13, 710:85-3-34, 710:85-3-57, 710:85-5-11, 710:85-9-4** and **710:85-11-7** have been amended, changing *Rules of Practice and Procedure before the Oklahoma Tax Commission* to *Rules of Practice and Procedure before the Office of the Administrative Law Judges* and also updating the internal cross-references.
CONTACT PERSON:
Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 1. OKLAHOMA QUALITY JOBS PROGRAM

710:85-1-8. Procedure for filing claim, verification, payment, protest

(a) **Contents of claim.** As soon as practicable after the end of a calendar quarter, the qualified establishment shall file a claim for gross payroll paid the previous quarter. The claim, on forms prescribed by the Commission, shall include:

(1) Name of qualified establishment;
(2) Identification number of qualified establishment;
(3) Period for which claim is filed;
(4) Actual number of new direct jobs during period of claim;
(5) Gross payroll of new direct jobs during period of claim;
(6) Net benefit rate; and
(7) Amount claimed for period.

(b) **Deadline for filing first claim.** For establishments that were approved after October 31, 2001, *in no event shall the first claim for incentive payments be filed later than three (3) years from the start date designated by the Oklahoma Department of Commerce.*

(c) **Amount of claim not to include penalty, interest paid.** The amount claimed shall not include any portion of penalty and/or interest paid by the qualified establishment because of delinquent filing and/or payment of withholding tax. [**See:** 68 O.S. §2385.6]

(d) **Verification of claim.** The Commission shall verify the actual gross payroll utilizing information available to the Commission. All participating companies are required to retain documentation to verify the quality jobs employees and rebate amounts claimed. Documents retained shall include all employee names, both base and new employees, social security numbers, original hire dates, termination dates, individual wages drawn for each month, and copies of claim forms for the duration of the contract. Baseline employees must be filled by active employees as of the last business day of each month. If an employee in the baseline group is terminated or retires prior to the last business day of the month, the qualified establishment must replace the employee with a quality jobs employee or a newly hired employee. These records shall be retained in both hard copy form and in an electronic format approved by the Commission for a minimum of three (3) years after the final rebate payment is received by the company. In the event the Commission is unable to verify the gross payroll, the Commission may request additional information from the qualified establishment or may request the qualified establishment revise its claim to the amount verified by the Commission.

(e) **Payment of claim.** Except as provided in 710:85-1-11, the qualified establishment whose claim has been approved shall receive a warrant in an amount not to exceed the net benefit rate multiplied by the actual gross payroll for new direct jobs for the calendar quarter for which the claim is filed.

(f) **Procedure when claim cannot be verified or is revised.** The following shall apply when a claim cannot be verified or is revised by the Commission.

(1) The qualified establishment may, within sixty (60) days after the mailing of notification of action by the Commission, file with the Commission a protest under oath, signed by the qualified establishment or a duly authorized agent setting out:

(A) a statement of the action by the Commission that is protested;
(B) a statement of the qualified establishment's disagreement with such action; and
(C) supporting documentation relied on by the qualified establishment in support of its claim.

(2) If the qualified establishment fails to file a written protest within the sixty (60) days, then the action of the Commission shall become final and no appeal will be entertained.

(3) A protest to the action of the Commission filed by a qualified establishment shall be governed by 710:1-5-21 through ~~710:1-5-48~~710:1-5-49.

710:85-1-13. Qualified establishment may protest suspension of incentive payments

The following procedures shall apply if the Commission ceases or suspends a qualified establishment's incentive payment(s):

(1) **Filing of protest.** The qualified establishment may, within sixty (60) days after the mailing of notification of action by the Commission, file with the Commission a protest under oath, signed by the qualified establishment or his duly authorized agent setting out:

(A) a statement of action as determined by the Commission;
(B) a statement of the qualified establishment's disagreement with such action; and
(C) supporting documentation relied on by the qualified establishment in support of its claim.

(2) **Result of failure to file protest.** If the qualified establishment fails to file a written protest within the sixty (60) days, then the action of the Commission shall become final and no appeal will be entertained.

(3) **Rules of procedure to govern.** A protest to the action of the Commission filed by a qualified establishment shall be governed by 710:1-5-21 through ~~710:1-5-48~~710:1-5-49.

SUBCHAPTER 3. SAVING QUALITY JOBS PROGRAM

PART 3. PREMIUM PAYMENT PROGRAM

710:85-3-34. Procedure for filing claim, verification, payment, protest

(a) **Contents of claim.** As soon as practicable after the end of a calendar quarter, the qualified establishment shall file a claim for gross payroll paid the previous quarter. The claim, on forms prescribed by the Commission, shall include:

(1) Name of qualified establishment;
(2) Identification number of qualified establishment;
(3) Period for which claim is filed;
(4) Actual number of new direct jobs or at risk jobs during period of claim;
(5) Gross payroll of new direct jobs or at risk jobs during period of claim;
(6) Premium benefit rate; and
(7) Amount claimed for period.

(b) **Amount of claim not to include penalty, interest paid.** The amount claimed shall not include any portion of penalty and/or interest paid by the qualified establishment because of delinquent filing and/or payment of withholding tax. [**See:** 68 O.S. §2385.6]

(c) **Verification of claim.** The Commission shall verify the actual gross payroll utilizing information available to the Commission. In the event the Commission is unable to verify, the Commission may request additional information from the qualified establishment or may request the qualified establishment revise its claim to the amount verified by the Commission.

(d) **Payment of claim.** The qualified establishment whose claim has been approved will receive the amount claimed for the "Saving Quality Job" premium payment and the "Quality Job" incentive payment in one warrant. The combined premium payment and quality job payment cannot exceed five percent (5%) of the gross payroll of the establishment.

(e) **Procedure when claim cannot be verified or is revised.** The following shall apply when a claim cannot be verified or is revised by the Commission.

(1) The qualified establishment may, within sixty (60) days after the mailing of notification of action by the Commission, file with the Commission a protest under oath, signed by the qualified establishment or its duly authorized agent setting out:

(A) a statement of action as determined by the Commission;

(B) a statement of the qualified establishment's disagreement with such action; and

(C) supporting documentation relied on by the qualified establishment in support of its claim.

(2) If the qualified establishment fails to file a written protest within the sixty (60) days, then the action of the Commission shall become final and no appeal will be entertained.

(3) A protest to the action of the Commission filed by a qualified establishment shall be governed by the Rules of Practice and Procedure before the ~~Commission~~Office of the Administrative Law Judges set out in 710:1-5-21 through ~~710:1-5-48~~710:1-5-49.

PART 5. HIGH IMPACT PROJECTS

710:85-3-57. Qualified establishment may protest suspension of payments

The following procedures shall apply if the Commission ceases or suspends a qualified establishment's payment(s):

(1) **Filing of protest.** The qualified establishment may, within sixty (60) days after the mailing of notification of action by the Commission, file with the Commission a protest under oath, signed by the qualified establishment or its duly authorized agent setting out:

(A) a statement of action as determined by the Commission;

(B) a statement of the qualified establishment's disagreement with such action; and

(C) supporting documentation relied on by the qualified establishment in support of its claim.

(2) **Result of failure to file protest.** If the qualified establishment fails to file a written protest within the sixty (60) days, then the action of the Commission shall become final and no appeal will be entertained.

(3) **Rules of procedure to govern.** A protest to the action of the Commission filed by a qualified establishment shall be governed by the Rules of Practice and Procedure before the ~~Commission~~Office of the Administrative Law Judges set out in 710:1-5-21 through ~~710:1-5-48~~710:1-5-49.

SUBCHAPTER 5. SMALL EMPLOYER QUALITY JOBS PROGRAM

710:85-5-11. Procedure when claim cannot be verified, is revised, or is denied

The procedures set out in this Section shall apply when a claim cannot be verified, or is revised, by the Commission:

(1) The qualified establishment may, within sixty (60) days after the mailing of notification of action by the Commission, file with the Commission a protest under oath, signed by the qualified establishment or a duly authorized agent, setting out:

(A) A statement of the action determined by the Commission;

(B) A statement of the qualified establishment's disagreement with such action; and

(C) Supporting documentation relied on by the qualified establishment in support of its claim.

(2) If the qualified establishment fails to file a written protest within the sixty (60) days, then the action of the Commission shall become final and no appeal will be entertained.

(3) A protest to the action of the Commission filed by a qualified establishment shall be governed by *OAC* 710:1-5-21 through ~~710:1-5-48~~710:1-5-49.

SUBCHAPTER 7. OKLAHOMA FILM ENHANCEMENT REBATE PROGRAM

710:85-7-3. Procedure upon qualification; payment

(a) **Procedures upon approval by Office.** Upon notification to the Commission of each approved claim by the Office, the Commission will verify:

(1) That the claim of the production company contains an affidavit stating that the company has not received an exemption from sales taxes pursuant to the provisions of 68 O.S. § 1357(21); and,

(2) ~~That an Oklahoma income tax return has been filed or will be filed by the claimant for the tax year in which the production expenses were made.~~ The production company has filed or will file any Oklahoma tax return or tax document which may be required by law.

(b) **When repayment of taxes may be required.** If the facts set out in (a) of this Section cannot be verified, then the Commission shall require repayment of previously exempted sales taxes, and documentation that the taxes have been repaid shall be included in the claim.

(c) **Payment of claims.** Upon approval of the claim by the Office and processing by the Commission, the Commission shall issue payment for all approved claims from funds in the "Fund" on or after July 1, 2006, and on or after each July 1 thereafter following the fiscal year in which the documented expenditures were made. The amount of payments in any single fiscal year shall not exceed Five Million Dollars ($5,000,000.00). If the amount of approved claims exceeds the amount specified in this Section in a fiscal year, then the payments will be made in the order in which claims are approved by the office and any remaining approved claims will be carried over to the next fiscal year, subject to the same limitations for that year as set out in this Section.

SUBCHAPTER 9. OKLAHOMA QUALITY INVESTMENT ACT

710:85-9-4. Procedure for filing claim, review determination

(a) **Contents of claim.** As soon as practicable after the end of a fiscal year, the qualified establishment shall file a claim for the payment with the commission for ten percent (10%) of the total amount of capital costs actually invested by the establishment during that fiscal year. The claim, on forms prescribed by the Commission, shall include:

(1) Name of qualified establishment;

(2) Identification number of qualified establishment;

(3) Period for which claim is filed;

(4) Total amount of capital costs invested during the period of claim;

(5) Amount claimed for period.

(b) **Verification of claim.** The Commission shall verify the actual amount of capital costs and the actual tax benefit accrued or accruing to the State of Oklahoma utilizing information available to the Commission. In the event the Commission is unable to verify, the Commission may request additional information from the qualified establishment or may reject the establishment's claim based upon analysis of actual capital costs incurred by the establishment.

(c) **Payment of claim.** Except as provided in 710:85-9-7, the qualified establishment whose claim has been approved shall receive a warrant in an amount not to exceed a total of One Millions ($1,000,000.00). If the amount of investment payment claimed exceeds $1,000,000.00, the establishment may carry over the excess investment payment amount to any subsequent fiscal year during the term of the quality investment agreement and may be paid such amount if the combined amount of carryover and the investment payment claimed in that subsequent fiscal year do not exceed $1,000,000.00. No more than Five Million Dollars ($5,000,000.00) in total investment payments shall be payable or paid to a qualified establishment.

(d) **Procedure when claim cannot be verified or is revised.** The following shall apply when a claim cannot be verified and is rejected by the Commission.

(1) The qualified establishment may, within sixty (60) days after the mailing of notification of action by the Commission, file with the Commission a protest under oath, signed by the qualified establishment or a duly authorized agent setting out:

(A) a statement of the action by the Commission that is protested;

(B) a statement of the qualified establishment's disagreement with such action; and

(C) supporting documentation relied on by the qualified establishment in support of its claim.

(2) If the qualified establishment fails to file a written protest within the sixty (60) days then the action of the Commission shall become final and no appeal will be entertained.

(3) A protest to the action of the Commission filed by a qualified establishment shall be governed by 710:1-5-21 through ~~710:1-5-48~~710:1-5-49.

SUBCHAPTER 11. 21ST CENTURY QUALITY JOBS PROGRAM

710:85-11-7. Procedure when claim cannot be verified, is revised, or is denied

The procedures set out in this Section shall apply when a claim cannot be verified, is revised, or denied by the Commission:

(1) The qualified establishment may, within sixty (60) days after the mailing of notification of action by the Commission, file with the Commission a protest under oath, signed by the qualified establishment or a duly authorized agent, setting out:

(A) A statement of the action determined by the Commission;

(B) A statement of the qualified establishment's disagreement with such action; and

(C) Supporting documentation relied on by the qualified establishment in support of its claim.

(2) If the qualified establishment fails to file a written protest within the sixty (60) days, then the action of the Commission shall become final and no appeal will be entertained.

(3) A protest to the action of the Commission filed by a qualified establishment shall be governed by *OAC* 710:1-5-21 through ~~710:1-5-48~~710:1-5-49.

[OAR Docket #15-429; filed 6-10-15]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 90. WITHHOLDING

[OAR Docket #15-430]

RULEMAKING ACTION:
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RULES:
Subchapter 1. General Provisions
710:90-1-12 [AMENDED]
Subchapter 5. Liability and Penalties
710:90-5-3 [AMENDED]
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INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Section **710:90-1-12** has been amended to update references and remove obsolete language.
Section **710:90-5-3** amendments have been made to implement the provisions of SB 1228 by outlining the parameters under which a person will be deemed personally liable for the nonpayment of withholding tax. [**68:253**]
CONTACT PERSON:
Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 1. GENERAL PROVISIONS

710:90-1-12. Protest of proposed assessment

(a) Where a person does not acquiesce in a proposed assessment (described in ~~subsection~~subsections (a) of 710:90-5-3 and 710:90-7-1), ~~he~~the taxpayer may file a protest within the period specified in the letter of proposed assessment (or within any extensions allowable by Statute that have been granted by the Division). If, after a review of his protest, the ~~Business Tax~~ Division is unable to reach agreement with taxpayer, the taxpayer's file will be forwarded to the Office of the Administrative Law Judge where the taxpayer will have an opportunity to have a hearing before an Administrative Law Judge. The Administrative Law Judge will notify such person of the date set for the hearing.

(b) If the taxpayer does not desire a hearing, an order will be issued by the Commission within a reasonable time. If a hearing before the Administrative Law Judge is requested and granted, order will not be issued until such time as the Administrative Law Judge has submitted Findings, Conclusions and Recommendations and the Commission has made a final determination.

(c) The issuance of an order by the Commission constitutes a final determination. The person filing the return has thirty (30) days from the date of the order in which to directly appeal to the Oklahoma Supreme Court, if desired.

SUBCHAPTER 5. LIABILITY AND PENALTIES

710:90-5-3. Personal liability and issuance of withholding tax assessments

(a) ~~Any employer who is under a duty to withhold and remit Oklahoma Withholding Taxes shall be personally and individually liable for the failure to withhold or pay to the Commission any sums required.~~ Withholding tax assessments will be issued against the legal entity as well as against other person(s) who may be liable for the tax pursuant to law. Any person shall be liable for the payment of withholding tax if during the period of time for which the assessment was made the person was responsible for withholding and remittance of taxes or had direct control, supervision or responsibility for filing returns and making payments of the tax due the State of Oklahoma.

(b) ~~Any officer or individual listed on the Business Registration filed by an employer who is designated as responsible for Oklahoma Income Tax Withholding and its remittance, may be held personally liable until such name is removed or information is received or becomes available to the contrary. [**See:** 68 O.S. §2385.3(d)]~~Personal liability for withholding tax shall be determined in accordance with the standards for determining liability for payment of federal withholding tax pursuant to the Internal Revenue Code of 1986, as amended, or regulations promulgated pursuant to such section.

[OAR Docket #15-430; filed 6-10-15]

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

[OAR Docket #15-431]

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RULES:
Subchapter 21. Quality Events

710:95-21-2 [AMENDED]
710:95-21-3 [AMENDED]
710:95-21-4 [AMENDED]
710:95-21-7 [AMENDED]
710:95-21-8 [AMENDED]
710:95-21-9 [AMENDED]
710:95-21-10 [AMENDED]
710:95-21-11 [AMENDED]
Subchapter 22. Registration Requirements for Resident and Nonresident Contractors
710:95-22-9 [AMENDED]

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Oklahoma Tax Commission; 68 O.S. §§ 203, 4309

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n/a

ANALYSIS:
Subchapter 21 has been amended to reflect the changes made to the Quality Event Incentive Act, 68 O.S. §§ 4301 et seq., pursuant to the adoption by the Oklahoma Legislature of HB 2711 [2014] effective November 1, 2014 which modifies the qualification procedures for quality event recognition along with the determination of incremental sales tax occurring as a result of an event.

Section **710:95-22-9** has been amended, changing *Rules of Practice and Procedure before the Oklahoma Tax Commission* to *Rules of Practice and Procedure before the Office of the Administrative Law Judges* and also updating the internal cross-references.

CONTACT PERSON:
Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 21. QUALITY EVENTS

710:95-21-2. Definitions

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

"***Certified sponsor***" *means an entity or organization authorized to promote and conduct a quality event, which is incurring expenses for the promotion of such event to be conducted within the corporate limits of an eligible municipality or an unincorporated area within a county.*

"**Commission**" means the Oklahoma Tax Commission.

"***Economic impact study***" means a study ~~of the geographic area designated by a host community pursuant to Section 710:95-21-4(b)~~, which includes:

(A) A description of the quality event,

(B) Information regarding the site selection process for the quality event,

(C) An estimate of the expenses anticipated to be incurred in connection with hosting the quality event,

(D) An estimate of the total gross sales made by vendors ~~within the designated area~~ during any period of time during which no quality event activity occurs,

(E) A detailed estimate of the anticipated increase in sales tax revenue directly attributable to the quality event,

(F) The general economic impact likely to occur ~~in the designated area~~ as a result of the preparation for, occurrence of and activity occurring in connection with the dissolution of, a quality event, and

(G) Any additional information the Oklahoma Tax Commission may require.

"***Eligible local support amounts***" *means:*

(A) *Any payment made by a local government entity or transfer of monies from the general fund or transfer of tax revenues derived from a locally imposed tax to a certified sponsor for the purpose of attracting, promoting, advertising, organizing, conducting or otherwise supporting a quality event, or*

(B) *Any direct payment made by a certified sponsor to a for-profit or nonprofit entity, other than the host community, for the purpose of attracting, promoting, advertising, organizing, conducting or otherwise supporting a quality event.*

"***Event history***" *means:*

(A) *Historical information on the event including past locations of the event,*

(B) *A description of previous attempts by the host community to secure the event,*

(C) *Information regarding attempts by other communities to recruit the event, and*

(D) *If applicable, the competitive bidding process for securing the event by the host community.*

"***Host community***" *means any county, incorporated city or town, or any combination of counties, incorporated cities or towns of the state which are authorized by their respective governing bodies to host or assist in the presentation of a quality event.*

"**Incremental sales tax revenue**" means, ~~with respect to a new event, a comparison of~~ the amount of additional state sales tax revenue~~, if any, in excess of the amount of state sales tax revenue~~ collected ~~within a quality event area during the same month of the preceding year for purposes of the economic impact study required by Section 710:95-21-4(b); or, with respect to a recurring event, a comparison of the amount of additional sales tax revenue, if any, in excess of the calculated average amount of sales tax revenue collected in the quality event area during the preceding year for purposes of the economic impact study required by Section 710:95-21-4(b). For purposes~~

~~of computing the calculated average amount of monthly sales tax revenue collected as required by this paragraph with respect to a recurring event, the Oklahoma Tax Commission shall average total sales tax revenue collected by month but shall exclude revenue collected during the same month or months in a prior year during which the recurring event was conducted and if the event does not occur during the months of November or December, shall also exclude revenue collected during the immediately preceding November and December. The calculated average amount of monthly sales tax revenue shall be used to determine whether a recurring event produces incremental sales tax revenues~~as a result of the quality event, as determined by an economic impact study verified by the Oklahoma Tax Commission.

"***New event***" *means a quality event which did not occur within a period of twenty-four (24) months prior to the month during which a quality event is held.*

"***Quality event***" *means:*

(A) *A new event or a meeting of a nationally recognized organization or its members,*

(B) *A new or existing event that is a national, international or world championship, or*

(C) *A new or existing event that is managed or produced by an Oklahoma-based national or international organization.*

~~**"Quality event area"** means a geographic area designated by a host community pursuant to Section 710:95-21-3(a)(1) determined to realize direct economic benefit from the preparation for, occurrence of and activity occurring in connection with the dissolution of, a quality event; provided, the designated area shall never constitute an area greater than thirteen (13) miles from any property line of the primary property at which the quality event is located. The property line shall be based on the legal description or survey of a single location determined by a host community to be the primary property for a quality event area.~~

"Recurring event" means a quality event which occurred at least once within the twenty-four (24) months prior to the month during which a quality event is held.

~~**"Revenue capture period"** means a time period beginning no earlier than two (2) days prior to the quality event date or the first day upon which the quality event occurs and ending no later than two (2) days after the conclusion of the quality event date or the last day upon which quality event activities occur.~~

"State sales tax revenue" means the proceeds from the state sales tax levy imposed pursuant to Section 1354 of Title 68 of the Oklahoma Statutes upon taxable transactions occurring ~~within the quality event area during the authorized revenue capture period~~as a result of the quality event, as determined by an economic impact study verified by the Oklahoma Tax Commission.

"Vendors" means those persons or business entities making taxable sales of tangible personal property or services ~~within a quality event area~~as a result of the quality event, as determined by an economic impact study verified by the Oklahoma Tax Commission and, unless the context otherwise requires, shall have the same meaning as defined by Section 1352 of Title 68 of the Oklahoma Statutes.

710:95-21-3. Quality event requirements, limitations and eligibility

(a) **Designation of quality event.** For purposes of this Subchapter a host community can designate a quality event pursuant to the adoption by the governing body of the host community an ordinance or resolution which must contain designation of the following:

(1) ~~A geographic area as a quality event area;~~

~~(2) A length of time of the revenue capture period~~The dates during which a quality event will be hosted; and

(~~3~~2) The type of expenses eligible for payment through distribution of captured revenues to the host community including, but not limited to, advertising, facility rental, promotional materials and security.

(b) **Designation requirements.** The resolution or ordinance must be adopted at least six months prior to the first day of the quality event.

(c) **Limitations.** A host community may only designate one quality event during ~~a single designated revenue capture period for purposes of the payments authorized by this Subchapter~~ the timeframe in which a designated quality event will occur.

(d) **Eligible quality events.** Eligibility for qualify event status is available for the following:

(1) New events or meetings of a nationally recognized organization or its members ~~which is being located at a site chosen through a competitive site selection process in which at least one site not located in this state was considered to include:~~,

~~(1) **New events.** Quality events which did not occur within a period of twenty-four (24) months prior to the month during which a quality event is held; and~~

~~(2) **Recurring events.** Quality events which occurred at least once within the twenty-four (24) months prior to the month during which a quality event is held.~~

(2) New or existing events that are a national, international or world championship, or

(3) New or existing events that are managed or produced by an Oklahoma-based national or international organization.

710:95-21-4. Quality event approval and application requirements

(a) **Application for approval.** Within thirty (30) days of the adoption date of the ordinance or resolution designating a quality event, the host community must submit a written request for recognition as a quality event to the Tax Policy Division of the Oklahoma Tax Commission at 2501 Lincoln Blvd., Oklahoma City, Oklahoma 73194. The postmark date of the written request for recognition as a quality event is deemed to be its date of delivery.

(b) **Application requirements.** The application for recognition must include the following:

(1) **Ordinance or resolution.** A copy of the ordinance or resolution designating the quality event.

(2) **Economic impact study.** The economic study must include the following information:

(A) A description of the quality event.

(B) Information regarding the site selection process for the quality event ~~including the host community's bid documents submitted to the site selection organization soliciting the quality event, confirmation from the site selection organization that at least one state other than Oklahoma was considered for the quality event and the letter from the site selection organization designating Oklahoma as the quality event location~~.

(C) An estimate of the expenses anticipated to be incurred in connection with hosting the quality event which specifically categorizes the type of expenses, such as advertising, anticipated to be incurred along with the estimated costs associated therewith.

(D) An estimate of the total gross sales made by vendors ~~within the designated area~~ during any period of time during which no quality event activity occurs. ~~This estimate must designate the month considered to estimate the total gross sales and the vendors and their sales tax permit numbers.~~

(E) A detailed estimate of the anticipated increase in sales tax revenue directly attributable to the quality event. ~~This estimate must include a list of vendors and sales tax permit numbers within the designated quality event area the Tax Commission is to consider for purposes of incremental sales tax revenue payments. To be included on the list by the host community the vendor must have been making sales subject to the Sales Tax Code in the same month or months of the quality event revenue capture period in the preceding year.~~

(F) The general economic impact likely to occur ~~in the designated area~~ as a result of the preparation for, occurrence of and activity occurring in connection with the dissolution of, a quality event, and

(3) **Event history.** The event history must include the following information:

(A) *Historical information on the event including past locations of the event,*

(B) *A description of previous attempts by the host community to secure the event,*

(C) *Information regarding attempts by other communities to recruit the event, and*

(D) *If applicable, the competitive bidding process for securing the event by the host community.*

710:95-21-7. ~~Timeframe for determining the amount of the incremental state sales tax revenue~~Host community requirement to submit event related information

~~Within ninety (90) days after the conclusion of a quality event, the Commission must determine the amount of incremental state sales tax revenue remitted by vendors located within the designated quality event area~~After conclusion of an event, the host community must provide information related to the event, such as attendance figures, financial information or other public information held by the host community that the Tax Commission considers necessary to evaluate the actual economic impact of the event.

710:95-21-8. ~~Calculation~~Verification of incremental state sales tax revenue

~~(a) **Calculation of incremental state sales tax revenue for new events.** To calculate new event incremental state sales tax revenue the Commission must compare the amount of state sales tax revenue remitted to the Commission by the vendors listed by the host community in the economic impact study within the quality event area during the month or months of the quality event revenue capture period against the amount these vendor remitted during the same month or months of the quality event revenue capture period for the preceding year.~~Upon receipt, the Tax Commission will review the documentation submitted pursuant to Section 710:95-21-7 to verify additional state sales tax revenue, as determined by the economic impact study, which was collected as a result of the event.

~~(b) **Calculation of incremental state sales tax revenue for recurring events.** To calculate recurring event incremental state sales tax revenue the Commission must do the following:~~

~~(1) Average total sales tax revenue collected by month excluding revenue collected during the same month or months in a prior year during which the recurring event was conducted and if the event does not occur during the months of November and December the revenue collected during the immediately preceding November and December must also be excluded.~~

~~(2) Compare the total sales tax revenue average referenced in paragraph (1) of this subsection with the amount of state sales tax revenue remitted during the month or months of the revenue capture period for the quality event to the Commission by the vendors within the quality event area which were listed by the host community in the economic impact study.~~

710:95-21-9. Manner of determining payment

The Commission must compare the total amount of eligible local support amounts with the total amount of incremental state sales tax revenues remitted by vendors ~~located within the designated quality event areawhich were specified by the host community for purposes of computation of the incremental sales tax revenue~~, such revenues to be established through the economic impact study. Payments made to the host community are governed by the following determinations:

(1) If a determination is made that the total amount of incremental state sales tax revenues is zero, no payment shall be made to a host community.

(2) If a determination is made that the total amount of incremental state sales tax revenues is greater than zero, but less than the total amount of eligible local support amounts, a payment shall be made subject to the limitation of the payment cap provided for in Section 710:95-21-10(b), to the host community of the quality

event in an amount equal to the incremental state sales tax revenues.

(3) If a determination is made that the total amount of incremental state sales tax revenues is at least equal to the amount of eligible local support amounts, a payment shall be made, subject to the limitation of the payment cap provided in Section 710:95-21-10(b), to the host community in which the quality event occurs in an amount equal to, but not greater than, the eligible local support amounts.

710:95-21-10. Incentive payment limitations

(a) **Sources other than incremental state sales tax revenues.** No payment shall be made to any host community from a source other than the incremental state sales tax revenues, if any, derived from state sales tax remittances of vendors ~~located within the applicable quality event area~~as a result of the quality event, as determined by an economic impact study verified by the Oklahoma Tax Commission.

(b) **Payment threshold.** No payment shall be made to any host community in excess of Two Hundred Fifty Thousand Dollars ($250,000.00) for a single quality event regardless of the amount of eligible local support paid by the host community.

(c) **Local sales tax revenues.** No proceeds from the levy of any sales tax imposed by a county or a municipality shall be affected by the provisions of this Subchapter and the proceeds from any such levy shall be collected and remitted as required by the Oklahoma Sales Tax Code. The distribution of the revenues shall be made in accordance with all applicable requirements of law with respect to such sales tax levies.

710:95-21-11. Incentive payments to host communities

After ~~calculation~~verification of the incremental state sales tax revenue and ~~verification of the~~ eligible local support amounts the Commission shall issue a warrant subject to the limitation set forth in Section 710:95-21-10(b) equal to the amount of the incremental state sales tax revenue not to exceed the eligible local support amounts to the host community.

SUBCHAPTER 22. REGISTRATION REQUIREMENTS FOR RESIDENT AND NONRESIDENT CONTRACTORS

710:95-22-9. Hearing procedures governing fine protests

(a) **Hearing notice.** A notice shall be issued to the contractor requiring him to appear before an Administrative Law Judge to show that the fine was issued in error. At least fifteen (15) days' notice of the hearing shall be given the parties. The notice shall contain a date, time certain and location for the hearing.

(b) **Show cause hearing.** The contractor may represent himself or be represented by an attorney, accountant, enrolled agent, or a representative approved by the Commission. Evidence and testimony of witnesses may be presented at the hearing and a record will be made in accordance with the Rules of Practice and Procedure before the Office of the Administrative Law Judges in 710:1-5-21 through ~~710:1-5-48~~710:1-5-49.

(c) **Findings, conclusions and recommendations.** Following the hearing, the Administrative Law Judge will issue Findings, Conclusions and Recommendations. For options available to the parties after action of the Administrative Law Judge, refer to OAC 710:1-5-40.

(d) **Commission order.** Following the issuance of the Findings by the Administrative Law Judge, the Commissioners may either adopt or modify in whole or in part the Finding of the ALJ.

(e) **Appeal.** Once the Order of the Commission is issued, the contractor has thirty (30) days from mailing of the order within which to file an appeal with the Oklahoma Supreme Court.

[OAR Docket #15-431; filed 6-10-15]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 1. ORGANIZATION AND METHOD OF OPERATIONS

[OAR Docket #15-451]

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765:1-1-5 [AMENDED]
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47 O.S. Section 582(E)
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ANALYSIS:

The office hours for the Commission were changed from specified eight hour period to a minimum number of hours per day to give the Commission flexibility in corresponding operating hours with personnel working hours. A thorough research of Oklahoma statutes did not discover any statutory requirement.

Public records are defined in 51 Okla. Stat. § 24A.3. The statute states personal financial information submitted for the purpose of obtaining a license is not public record. The information described in the Rule is all requested as part of an applicants financial information.

Fee schedules are required to be disclosed pursuant to 51 Okla. Stat. §24A.5. The fees established are in line with other established fees.

CONTACT PERSON:

John W. Maile, Executive Director, Used Motor Vehicle and Parts Commission, 2401 N.W. 23rd Street, Suite 57, Oklahoma City, OK 73107, 405-521-3600, John.W.Maile@umvpc.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

765:1-1-5. Office hours

~~Office hours shall be from 8:30 A.M. to 4:30 P.M.~~The Commission office shall be open to the public a minimum of eight hours each day, except Saturday and Sunday, and any legal holiday established by statute or proclamation of the Governor.

765:1-1-8. Public inspection of records

(a) All rules and other written statements of policy or interpretations formulated, adopted, or used by the Commission in the discharge of its functions, and all final orders, decisions, and opinions will be made available for public inspection at the Commission's principal office during regular office hours.

(b) Financial Statements submitted to the Commission as part of an application for a license shall not be deemed public records. Social Security numbers and Driver's License numbers shall not be public records.

765:1-1-9. Copies of records

(a) Copies of official records of the Commission may be made, and may be certified by the Executive Director and his/her designee. A fee for such copies and certification may be charged as provided in a fee schedule enacted by the Commission. The fee for each of the following items shall be as follows:

(1) $.25 mechanical copy

(2) $1.00 certified mechanical copy

(3) $5.00 list of Wholesale Used Motor Vehicle Dealers

(4) $10.00 list of Automotive Dismantlers or Rebuilders

(5) $10.00 list of ~~BID CARD holders~~Crushers

(6) $10.00 list of Manufactured Home Dealers or Salespersons

(7) $25.00 list of Used Motor Vehicle Dealers

(8) $35.00 list of Used Motor Vehicle Salesmen

(9) $50.00 label list of any kind

(10) $10.00 hourly research fee

(11) Actual cost of transcription of hearings as submitted by transcriber.

(12) $100.00 Deposit to begin transcription of an individual proceeding.

(b) Requests for copies of Commission files must be made between the hours of 9:00AM and 4:00PM Monday through Friday (excluding holidays), providing the copier is available and authorized personnel is available for copy service. Otherwise copying will be scheduled upon request. Any requests requiring research will have to be scheduled with authorized personnel as time permits. Any material in the office of the Commission which is privileged or protected from publication by state law, shall not be copied, nor be available for public inspection.

[OAR Docket #15-451; filed 6-12-15]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 2. INFORMAL AND FORMAL PROCEDURES

[OAR Docket #15-452]

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PERMANENT final adoption

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Subchapter 1. Informal Procedures - Consumer Complaints
765:2-1-4 [NEW]
Subchapter 3. Formal Procedures
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765:2-3-3 [AMENDED]
765:2-3-4 [AMENDED]
765:2-3-6 [AMENDED]
765:2-3-11 [AMENDED]
765:2-3-13 [AMENDED]
765:2-3-14 [NEW]
Subchapter 5. Arbitration
765:2-5-7 [AMENDED]
765:2-5-8 [AMENDED]
765:2-5-12 [AMENDED]

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75 O.S. Section 302

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n/a

ANALYSIS:

47 Okla. Stat. § 583 B. 4 provides that a used motor vehicle salesperson applicant's license is deemed to be issued upon submission of the application and fee. An additional application requirement is added for applicants with a felony conviction for the protection of the public.

47 Oka. Stat. § 585 provides for hearings in certain circumstances. 47 Okla. Stat. § 582 E.2.F. provides arbitration by the Commission. The

amendments to the Rules in this chapter clarify the procedure for those proceedings.

CONTACT PERSON:

John W. Maile, Executive Director, Used Motor Vehicle and Parts Commission, 2401 N.W. 23rd Street, Suite 57, Oklahoma City, OK 73107, 405-521-3600, John.W.Maile@umvpc.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 1. INFORMAL PROCEDURES - CONSUMER COMPLAINTS

765:2-1-4. Applicants with Felony conviction(s)

An applicant who has been convicted of a Felony in any state or Federal jurisdiction within the last twenty (20) years preceding the application for license shall require review and approval by the Commission en banc before beginning to act as a licensee.

SUBCHAPTER 3. FORMAL PROCEDURES

765:2-3-1. Parties to proceeding

(a) The Executive Director or the Commission's legal counsel shall file a sworn complaint for every individual proceeding. The style of the complaint shall be: STATE OF OKLAHOMA, ex rel. THE USED MOTOR VEHICLE AND PARTS COMMISSION vs. PARTY'S NAME.

(b) A Respondent in an individual proceeding shall be the legal entity holding a license. A person that is a stockholder, member of a limited liability company, or stockholder in the legal entity conducting business, may also be named as a party Respondent. Any sanction which may be imposed against a licensee may be imposed against the individual Respondent where the acts giving rise to the imposition of the sanction were committed by or are legally attributable to the individual Respondent.

765:2-3-3. Persons to be notified

(a) Every party to an individual proceeding shall be entitled to notice of the proceeding.

(b) If the applicant or licensee is a ~~used motor vehicle~~ salesman, the Commission shall notify the person, firm, association, corporation or trust with whom the salesman is or will be associated.

~~(c) A copy of the notice shall be mailed with return receipt requested to the surety on the applicant's or licensee's bond at the address of the surety given in the bond.~~

765:2-3-4. Method of service

(a) **Service.** All notices or other papers requiring service in an individual proceeding shall be served in one of the following manners:

(1) personally, by a person appointed by the Commission for such purpose, in any manner authorized by the law of this state for the personal service of summons in proceedings in a state court, or

(2) by certified mail mailed by the Executive Director or his/her designee, addressed to the noticee at such post office address as he/she may have filed with the Commission, or if no such address is in file, at the noticee's last known post office address, or

(3) if no known post office address can be discovered, and after exercise of due diligence, by publication in such newspapers and for such time, or by posting in such places for such time, as the Executive Director may determine and direct as most likely to give the noticee timely notice.

(4) personally, by any employee of the Commission.

(b) **Completion.** Service of notice shall be complete upon personal service, upon the receipt of the card showing receipt of certified mail by the addressee, or upon the posting of notice or first publication thereof, as the case may be.

765:2-3-6. Hearing

(a) **Presiding officer.** The hearing shall be conducted by the Chairman of the Commission or his designate.

(b) **Order of procedure.** Each individual proceeding shall proceed as follows:

(1) Any party shall at all times have the right to counsel. Counsel must be licensed to practice law by the Oklahoma Supreme Court.

(2) All parties shall be afforded the opportunity to present witnesses, evidence, and argument on all issues involved.

(3) A party may cross-examine witnesses.

(4) The Commission or hearing officer may ask questions of all parties.

(c) **Objections and motions.** The Chairman or hearing officer shall rule on the admissibility of evidence and objections to evidence, and shall rule on motions or objections raised in the course of the hearing. In the exercise of this function, the Commission or officer may rely on the advice of counsel present and serving in an advisory capacity. In making a ruling on evidence, the Chairman or hearing officer shall not be required to follow Rules of Evidence, but may use his/her own judgment whether the evidence should be admitted. Any party may object to a ruling which the party considers erroneous, and an exception to such ruling shall be noted of record. Failure to timely object to any alleged error or irregularity shall be deemed as a waiver of such objection.

(d) **Burden and standard of proof.** The burden of proving the allegations contained in its Complaint shall be upon the Movant. The standard of proof required to sustain the imposition of any sanction against a Respondent shall be by clear and convincing evidence.

(e) **Ruling.**

(1) The Commission or Hearing Officer shall prepare Findings of Fact and Conclusions of Law. The Commission or Hearing Officer may request the parties to submit proposed Findings and Conclusions before making a final ruling. Any party may file proposed Findings and Conclusions. Disposition of any individual proceeding may be by stipulation, agreed settlement, consent order, default or majority vote.

(2) The Commission by majority vote, may deny, suspend, or revoke a license or impose a fine, if authorized, for any of the reasons provided in 47 O.S. Section 581 et seq. The Commission, by majority vote, may ~~refuse,~~deny, suspend, cancel, or revoke a license or impose a fine, if authorized, for any of the reasons provided in 47 O.S. Section 591.1 et seq.

765:2-3-11. Record of hearing

(a) **Contents of record.** The record in every individual proceeding shall include the following:

(1) all pleadings, motions, and intermediate rulings,

(2) evidence received and considered,

(3) a statement of matters officially noticed,

(4) questions and offers of proof, objections and rulings thereon,

(5) proposed findings and exceptions,

(6) any decision, opinion, or report by the person(s) presiding at the hearing, and

(7) all staff memoranda or data submitted to the hearing officer or the Commission in connection with their consideration of the case.

(8) the recording of the individual proceeding made by the Commission.

(b) **Recording.**

(1) A record of the hearing, by means of ~~tape~~ recording or court reporter's transcript, will be made of all hearings conducted by the Commission or a hearing officer unless the presiding officer designates otherwise.

(2) The record of the hearing and the file containing the pleadings will be maintained in a place designated by the Executive Director. The ~~tape~~ recordings of the proceedings shall be maintained for a period of one (1) year.

(c) **Transcript.** A transcript of the proceeding shall not be transcribed except upon written application by any party to the action. The party requesting transcription will bear the cost and will pay a fee according to a schedule established by the Commission. An initial deposit set by the Commission also must be paid by said party.

(d) **Final order.** All final orders in individual proceedings shall be in writing. The final order shall include Findings of Fact and Conclusions of Law, separately stated. A copy of the final order will be mailed forthwith to each party and to his/her attorney of record. A Final Order may be signed by the Chairman or his designee without approval or review of the Commission, so long as said Order fairly represents the action taken. No other signatures shall be required.

765:2-3-13. Appeal

The licensee ~~or applicant~~ may appeal the decision of the Commission within thirty (30) days from the date thereof. Such appeal ~~shall be made to the District Court of Oklahoma County and~~ shall be done in the manner provided in 47 O.S. Section 581 et seq., and the Administrative Procedures Act. If the issues involved were first presented to the Commission by a complaint filed with the Commission, the complainant shall have the same right to appeal.

765:2-3-14. Summary proceedings

Any matter which could be the subject of a Formal Proceeding may be disposed of by a summary proceeding when agreed to by all parties. Such summary proceeding may include, but not limited to, Consent Agreement, or Consent Orders, signed by all affected parties.

SUBCHAPTER 5. ARBITRATION

765:2-5-7. Time for hearing

(a) **Setting hearing.** The time set for a hearing, specified in the notice, shall not be less than ten (10) days after the date the notice is completed.

(b) **Continuances.** Written motions for any continuances or extensions of time shall state the time desired and the reasons for the request. The Executive Director or his designate may rule on said motions, or in the case of proceeding before the Commission en banc, the Chairman or his designate may ~~made~~make said ruling. Said application shall be served upon the Executive Director. If the request is denied, the moving party may renew the request for continuance at the hearing.

765:2-5-8. Initial hearing

(a) **Presiding officer.** The initial hearing shall be conducted by the Executive Director of the Commission or his designate. If the hearing is conducted by a designate, the person so designated shall be licensed to practice law in the State of Oklahoma.

(b) **Order of procedure.** Each individual proceeding shall proceed as follows:

(1) Any party shall at all times have the right to counsel. Counsel must be licensed to practice law by the Oklahoma Supreme Court.

(2) All parties shall be afforded the opportunity to present witnesses, evidence, and argument on all issues involved. The presiding officer shall swear witnesses and admit evidence.

(3) A party or counsel may cross-examine witnesses.

(4) The presiding officer or any Commissioner may ask questions of all parties.

(c) **Objections and motions.** The presiding officer shall rule on the admissibility of evidence and objections to evidence, and shall rule on motions or objections raised in the course of the hearing. In the exercise of this function, the Commission or officer may rely on the advice of counsel present and serving in an advisory capacity. Any party may object to a

ruling which the party considers erroneous, and an exception to such ruling shall be noted of record. Failure to timely object to any alleged error or irregularity shall be deemed as a waiver of such objection.

(d) **Summary.** The presiding officer shall prepare Findings of Fact and Conclusions of Law. The parties may submit proposed Findings of Fact and Conclusions of Law to the presiding officer to be included in the case record. The presiding officer shall prepare a summary of the case, together with Findings of Fact and Conclusions of Law which shall be presented to the Commission en banc at its next available meeting. The summary, Findings and Conclusions shall be provided to all parties and each shall be given the opportunity to reply, either in writing or orally before the Commission en banc.

(e) **Negotiated settlement.** The presiding officer may suggest to the parties a proposed settlement of the controversy and may attempt to resolve the controversy by negotiating with the parties prior to termination of the hearing.

765:2-5-12. Record of hearing

(a) **Contents of record.** The record in every proceeding shall include the following:

(1) all pleadings, motions, and intermediate rulings,

(2) evidence received and considered,

(3) a statement of matters officially noticed,

(4) questions and offers of proof, objections and rulings thereon,

(5) proposed findings and exceptions, and

(6) any report by the presiding officer~~.~~,

(7) the recording of the hearing made by the Commission.

(b) **Recording.**

(1) A record of the hearing, by means of ~~tape~~ recording or court reporter's transcript, will be made of all hearings conducted by the Commission or a hearing officer unless the presiding officer designates otherwise.

(2) The record of the hearing and the file containing the pleadings will be maintained in a place designated by the Executive Director. The ~~tape~~ recordings of the proceedings shall be maintained for a period of one (1) year.

(c) **Transcript.** A transcript of the proceeding shall not be transcribed except upon written application by any party to the action. The party requesting transcription will bear the cost and will pay a fee according to a schedule established by the Commission. An initial deposit set by the Commission also must be paid by said party.

(d) **Final decision.** All final decisions shall be in writing. A copy of the final decision will be mailed forthwith to each party and to his/her attorney of record.

[OAR Docket #15-452; filed 6-12-15]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 10. USED MOTOR VEHICLE DEALERS

[OAR Docket #15-453]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. Licensing Qualifications, Procedures and Fees
765:10-1-3 [AMENDED]
765:10-1-6 [AMENDED]
765:10-1-6.1 [AMENDED]
765:10-1-8 [AMENDED]
Subchapter 3. Operation
765:10-3-1 [AMENDED]
765:10-3-2 [AMENDED]
765:10-3-5 [AMENDED]

AUTHORITY:
Oklahoma Used Motor Vehicle and Parts Commission
47 O.S. Section 582(E)
75 O.S. Section 250

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ANALYSIS:
47 Okla. Stat. § 582 E. 1. a. authorizes the Commission to make reasonable rules regarding the issuance of licenses. The Rule Amendments in this chapter relate to the qualifications for licensing classic or antique auctions, use of metal dealer plates, sales practices, consignment sales and penalties for specified violations involving used motor vehicle dealers and sales.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 1. LICENSING QUALIFICATIONS, PROCEDURES AND FEES

765:10-1-3. Place of business

(a) An applicant must have an established place of business. An established place of business means a location which includes at a minimum:

(1) a display area for vehicle(s) that are for retail easily accessible, and readily distinguishable from vehicles parked on the premises for purposes other than for sale of the vehicle by the licensed dealer,

(2) sufficient parking for the public,

(3) an office for conducting business where the books, records and files are kept,

(4) an office which is a building or is a separate room within a building on the premises devoted exclusively to the operation of the used motor vehicle business. that is considered a permanent structure with access to a restroom for the public. Such place of business shall not include an occupied residence and shall not include the use of vacant lots, tents, temporary stands, or other temporary office facilities.

(5) place of business shall meet all zoning, occupancy, and other requirements of the appropriate local government, and shall be regularly occupied by a person, firm, or corporation engaged in the business of selling used motor vehicles,

(6) a sign, not less than thirty-two (32) square feet in size, unless restricted to a smaller size by the applicable zoning regulations of the governmental body in which the business is located. The sign shall not be a banner or portable sign, but must be permanently affixed to the property and shall have permanently affixed legible letters of a size not smaller than six (6) inches in height. The sign and letters thereof shall be visible from the roadway nearest to the entrance of the place of business, and

(7) a business telephone, listed with directory assistance and usable at the place of business. Said telephone may include a cellular or digital telephone listed and usable at the place of business,

(b) An applicant may apply for a used motor vehicle dealer's license at the same address or location as another applicant or licensee. In addition to the requirements listed in subparagraph (a) above, such applicant shall be required to show that the location is of sufficient size, space and configuration for the operation of the dealership separate and apart from any other dealership at the same address or physical location without confusion by those with whom the applicant or licensee will be dealing as to with which licensee they are dealing.

(c) In the event an applicant is granted a license at the same address or location as another licensee, each licensee shall keep their vehicles segregated from those of the other licensee.

(d) It shall be solely within the discretion of the Commission whether it is appropriate that more than one applicant shall be licensed at the same location or address. If it appears after licensing that the licensees do not or cannot continue to fulfill the terms and conditions of licensing, the license of the offending licensee may be suspended or revoked.

(e) An applicant for a used motor vehicle dealer's license for the purpose of conducting a classic or antique automobile auction may apply for a license at a location which the applicant will use to conduct the auction, even if the location is temporary, or to be used only for the purpose of that auction. The applicant shall provide information satisfactory to the Commission relating to the applicant's permanent business address and for purpose of service of summons or other legal notice. The Commission shall not approve any other type of application for a temporary business location.

765:10-1-6. Issuance of license

(a) **Name.** A used motor vehicle dealer's license will be issued in the legal name of the individual proprietorship, partnership, ~~or~~ corporation, limited liability company or other legal entity, as identified on the application for dealer license. A license shall not be issued in a name which does not reflect the nature of the licensee's business nor any name which is misleading or confusing to those with whom the licensee deals. For example, a dealer shall not use the term "leasing" in his name if the dealer's business does not include that activity.

(b) **Certificate.** A used motor vehicle dealer's license shall consist of a signed certificate bearing the official seal of the Commission and shall specify the name and location of the place of business and assigned dealer number, which shall be posted in a conspicuous place in the dealer's place or places of business. The used motor vehicle dealer's license number will be prefixed with UD, followed by a four digit number and then the current year of license (UD-0000-90).

(c) **Titles.** The valid used motor vehicle dealer's license permits the dealer to transfer and assign titles and purchase and sell used motor vehicles without paying excise tax.

(d) **Card.** The dealer or designated managing officer will receive a gratis salesman's identification card which shall be carried upon his person at all times while acting as a used motor vehicle dealer.

(e) **Beginning business.** No applicant for a used motor vehicle dealer's license shall conduct business until such time as the Commission has issued him a license.

765:10-1-6.1. Used motor vehicle dealer plates

(a) The issuance of used motor vehicle dealer plates by the Oklahoma Tax Commission shall be subject to the verification by this Commission that the applicant is licensed as a used motor vehicle dealer and that the number of plates requested is appropriate for the size and nature of the licensee's business.

(b) A metal dealer's plates may be used for demonstrating, transporting or any other normal business of a dealer. Normal business of a dealer shall include use of the dealer plate on a vehicle regularly driven by the dealer or the dealer's spouse or any licensed salesperson, provided the title to the vehicle driven is in the name of the dealer's licensed used motor vehicle dealership on the front of the title or by assignment.

765:10-1-8. Changes

(a) **Ownership.** A change of ownership, including a change in a primary stockholder in the case of a corporation, or membership in the case of a limited liability company, shall require a new application and approval by the Commission before the business may begin operation.

(b) **Notification.** A change of ownership or any other change, such as change of name or address, which makes Commission records no longer accurate must be reported to the Commission immediately in writing on forms prescribed by the Commission for approval by the Commission. The dealership must meet all the requirements as prescribed for licensing. The Commission may revoke or suspend a license after it has been granted for change of condition resulting in failure to maintain the qualifications for license. Failure to complete the requirements for licensing at the new location within thirty (30) days shall result in suspension of the dealer's license until the licensing requirements are met. ~~The Commission may endorse changes on the license without charge.~~

SUBCHAPTER 3. OPERATION

765:10-3-1. Forms required

(a) **Retail Sales Forms.** The following forms shall be required in the sale of a used motor vehicle by a used motor vehicle dealer to anyone other than a licensed dealer:

(1) Sales contract or bill of sale,

(2) Odometer statement,

(3) Federal Trade Commission Buyer's Guide conforming to FTC and state standards,

(4) Written notice of thirty (30) day title-transfer requirement and receipt for delivery of certificate of title to buyer,

(5) Used motor vehicle dealer's temporary tag,

(6) Condition of sale:

(A) warranty, or

(B) vehicle service contract, or

(C) warranty disclaimer,

(7) Finance or security agreement, if applicable, and

(8) Consignment agreement, if applicable,

(9) Spot delivery form, if applicable,

(10) 'We Owe' form, if applicable,

(11) Any other form which affects the rights of either party.

(b) **Dealer to dealer forms.** The following forms shall be required in dealer to dealer transactions:

(1) Bill of sale, and

(2) Odometer statement, if required.

(c) **Approval.** All forms must be approved by the Commission. The content and forms to be used shall be filed thirty (30) days prior to use, and if not rejected in thirty (30) days from the filing date, the forms will be conditionally approved.

(d) **Standards.** The forms required shall contain substantially the following information:

(1) **Sales contract or bill of sale.**

(A) The sales contract or bill of sale shall state the names of the parties, the make, model, tag number and vehicle identification number (VIN) of the vehicle subject to the transaction, a statement of the selling amount, a description of the vehicle traded in, if any, and the consideration given therefore, and the statement referring to the FTC Buyer's Guide as required by federal law or rule, and proper signatures of the parties.

(B) Said form shall also contain or have attached a statement of any terms that create any contingencies in the completion of the contract, including contingencies relating to financing, whether by the dealer or a third party, and any limitations to which the contingencies may be subject.

(C) Said form shall also state, in clearly understandable terms, the type of title the purchaser shall receive, whether it be an "original" green title; an insurance loss dated title; a title with a theft or flood damage notation; or a rebuilt, salvage or junk title, or any other disclosures or discrepancies noted on the face of the title, including special notations regarding mileage or odometer readings, but shall not include a "repossessed" or "repo" title, together with some form of written acknowledgment by the purchaser that the purchaser is aware of the type of title to be received. Failure to make said disclosure shall create a presumption that the type of title to be received shall be an "original" green title without discrepancies of any sort.

(D) Said form shall not contain statements such as "trade in value does not reflect actual cash value of trade in" or any language that suggests the amounts stated are not the true value agreed upon by the parties.

(2) **Odometer statement.** The odometer statement must conform to the requirements of federal and state law.

(3) **Federal Trade Commission Buyer's Guide.**

(A) From and after May 9, 1985, in all sales to consumers, as defined in Title 16 Code of Federal Regulations Section 455.1(4), it shall be required that dealers display and complete the "Buyer's Guide" form required by the Federal Trade Commission. Display and completion of the "Buyer's Guide" as required by Federal Trade Commission Used Motor Vehicle Trade Regulation Rule shall be deemed compliance with this rule.

(B) The "Buyer's Guide" required herein shall not be used in lieu of warranty disclaimer forms to disclaim warranties, actual or implied. In order to disclaim any warranties, a separate warranty disclaimer form must be used.

(C) From and after May 9, 1985, conditions of sale forms must include the following language, conspicuously written on that form: "The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale." Condition of sale contracts which do not contain this language shall not be approved by this Commission. Nothing in this rule shall be construed to make any additional informational or substantive requirements as to warranties, implied warranties or service contracts beyond that presently required by the Used Motor Vehicle Trade Regulation Rules or state law.

(4) **Title, tax stamp and tax transfer notice requirement.** It shall be the duty of every person licensed to sell new or used motor vehicles to advise each purchaser in writing about his title requirements and payment of any taxes due. It shall be the duty of the selling dealer to affix the applicable used motor vehicle dealer's tax stamp in the appropriate place on the assignment or re-assignment area of the certificate of title. Dealers failing to comply with provisions of this section shall be responsible for all taxes due on such sales or on such vehicles.

(5) If a prospective purchaser makes a deposit of anything of value to obtain the option to complete a purchase (of a used motor vehicle) in the future, the dealer shall acknowledge the deposit in writing, the time period for which the option to purchase is valid, whether the deposit is refundable in whole or in part, and the conditions, if any under which the deposit may be refunded. The deposit shall be deemed refundable unless it is clearly stated in writing that the deposit or a portion thereof is non-refundable.

(e) **Used motor vehicle dealer's temporary tags.** Misuse of the used motor vehicle dealer's temporary tag may be grounds for the assessment of a fine or, suspension or revocation of the used motor vehicle dealer's license.

765:10-3-2. Consignment sales

(a) **Consignment.** A used motor vehicle dealer, whether acting as principal or agent, or by power of attorney, shall be responsible for complying with 765:10-3-1 et seq. with regard to all vehicles purchased, sold, or transferred by the dealer whether or not any other party has any interest in the vehicle being purchased, sold, or transferred. ~~The certificate of title of a used motor vehicle owned by an individual consigned to a used motor vehicle dealer for sale by that dealer need not be assigned by the individual to the dealer provided a consignment form approved by this Commission is used in the consignment transaction, and all other state and federal forms required are properly executed at the time of sale by the dealer as agent for the consignor. The consignee shall not be responsible for the truthfulness of the information provided to him by the consignor unless consignee willfully, knowingly, or negligently with reckless disregard of the true facts, misrepresents or misstates the information on the forms and/or certificate of title. The consignee, by acting as agent for the consignor, is not deemed to be a transferor with regard to the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. Section 1981 et seq. (Federal Odometer Act).~~The dealer need not disclose to a potential purchaser if the vehicle offered for sale has been consigned to the dealer by an individual. The individual consigning the vehicle shall provide a copy of the certificate of title to the dealer-consignee at the time of the execution of the consignment agreement. The certificate of title of a used motor vehicleowned by an individual consigned to a used motor vehicle dealer for sale by that dealer shall be assigned by the individual to the dealer, and shall be assigned to the purchaser contemporaneously with the transfer of funds from the buyer to the dealer, provided a consignment form approved by this Commission is used in the consignment transaction, and any other state and federal forms required are properly executed at the time of sale by the dealer as agent for the consignor. A used motor vehicle dealer's tax stamp shall be required in the assignment of the certificate of title from the dealer to the purchaser. The consignor shall have primary responsibility for the truthfulness of the information concerning the vehicle unless the dealer willfully, knowingly, or negligently with reckless disregard of the true facts, misrepresents or misstates the information on the forms and/or the certificate of title. The dealer, by acting as agent for the consignor, is deemed to be a transferor with regard to 49 U.S.C. Section 32701 et. seq. (Federal Odometer Act). The dealer and the consignor shall both be responsible to the consignor's lender, if any, to satisfy the lender's interest in the vehicle. A used motor vehicle dealer who has taken a used motor vehicle on consignment from an individual seller shall not consign the vehicle for sale to another used motor vehicle dealer without the knowledge and written consent of the individual seller and the execution of a consignment form among the three parties.

(b) ~~**Tax stamp.** A used motor vehicle dealer's tax stamp shall not be required in this transaction.~~ **Consignments between dealers.** A used motor vehicle dealer who takes another used motor vehicle dealer's vehicle on consignment to sell the vehicle at the first dealer's licensed location shall be responsible for complying with 765:10-3-1 et. seq. in all particulars, including execution of all forms required for the transaction. There shall be a written document of consignment of the vehicle from the consigning dealer to the selling dealer which may set forth the benefits, responsibilities, and duties of each dealer arising from the consignment transaction, and shall include a statement that the vehicle is subject to a lender's interest or that it is not. Both dealers shall be responsible to the lender to satisfy the lender's interest after the sale of the vehicle. The certificate of title to the vehicle consigned and sold shall be assigned from the consigning dealer to the selling dealer at the time of the sale of the vehicle and the certificate of title shall then be re-assigned to the purchaser. The selling dealer shall be responsible to the purchaser for any liability which may arise from or because of the sale of the vehicle, regardless of any statements to the contrary in the consignment form executed between the dealers. A used motor vehicle dealer's tax stamp shall be required in both transactions.

(c) ~~**Title.**~~

~~(1) The certificate of title of a used motor vehicle consigned by a dealer to another dealer to be sold from the consignee's (agent dealer's) location licensed by this Commission may be assigned or re-assigned directly from the consigning dealer to the purchaser. Transfer of certificates of title in every instance must comply with the provisions of 47 O.S. Sections 1105 and 1107. However, it shall be the responsibility of the consignee (agent dealer) to insure that all forms and state and federal laws and regulations are complied with in the transaction.~~

~~(2) The certificate of title of a used motor vehicle must be in the name of the dealer (whether by record of title, assignment, or re-assignment) who is offering the vehicle~~

~~to a prospective buyer if that dealer has the sole discretion in determining the selling price and in determining the amount of profit he will receive from the sale, whether or not any other party has any interest in the vehicle.~~**Consignments at auction.** In lieu of the procedure set forth in (a) and (b) above, a used motor vehicle dealer acting as an auction shall follow the procedure in this subsection. Sales by used motor vehicle dealers shall be evidenced by execution of an auction form approved by the Commission. An auction may provide by its own rules, the terms and conditions of sale and purchase between the consigner and the buyer. Said rules shall apply in all instances except where said rules are in conflict with state or federal statute or the Rules of this Commission. An auction, by acting as agent for the consignor, is not deemed to be a transferor with regard to Motor Vehicle Information and Cost Saving Act 15 U.S.C. Section 1981 et seq. (Federal Odometer Act.) A used motor vehicle dealer consigning a vehicle for sale at auction shall be responsible for complying with all record keeping requirements under the Rules of this Commission.

765:10-3-5. Prohibited Acts

(a) A used motor vehicle dealer shall not solicit or offer compensation for referrals of prospective buyers from used motor vehicle salespersons employed by another used motor vehicle dealer.

(b) A used motor vehicle dealer shall not fail to execute any of the forms required in a used motor vehicle transaction. A used motor vehicle dealer who fails to execute the required forms or who violates the terms of any contractual obligation in the sales transaction shall be subject to the appropriate fine for violation of the Rules of the Commission.

[OAR Docket #15-453; filed 6-12-15]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 11. USED MOTOR VEHICLE REBUILDERS

[OAR Docket #15-454]

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Subchapter 1. Licensing Qualifications, Procedures and Fees
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765:11-1-4 [AMENDED]
Subchapter 3. Authority
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765:11-3-2 [REVOKED]
Subchapter 4. Operation [NEW]
765:11-4-1 [NEW]
Subchapter 5. Assessment of Fine or Denial, Suspension, Or Revocation of License
765:11-5-2 [REVOKED]
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47 Okla. Stat. § 582 E. 1. a. and 47 Okla. Stat. § 591.3 B. authorizes the Commission to write rules regarding the licensing and regulation of used motor vehicle rebuilders. The Rule Amendments eliminate references to Buyer's Identification Cards eliminated by statute, amends the rebuilder's facility requirements and provides for the disclosure of the status of air bags in a rebuilt vehicle. The modification regarding rebuilder's facilities allows more applicants to qualify for licensing. The air bag disclosure requirement provides an additional protection for the public.
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 1. LICENSING QUALIFICATIONS, PROCEDURES AND FEES

765:11-1-2. Definitions

The following words or terms, when used in this Chapter, shall have the following meaning:

~~**"Buyer's Identification Card"**, hereinafter BID Card, means the certificate issued to a rebuilder pursuant to 47 O.S. Section 591.5, as amended.~~

"Rebuilder" shall be defined as set forth in 47 O.S. Section 581, as amended.

"Rebuilder's certificate" shall be the license granted by the Used Motor Vehicle and Parts Commission to a qualified rebuilder.

"Rebuilding" shall be defined as the process of reconstructing and repairing a repairable motor vehicle to roadworthy condition, including the completion of cosmetic or aesthetic repairs.

"Repairable motor vehicle" shall include damaged vehicles with an original or salvage certificate of title, but shall not include vehicles for which a junked title has been issued;

or which meet the statutory definition of a junked vehicle; or which is sold without a certificate of title; or is sold on a bill of sale or Affidavit of Ownership; or other document which indicates the vehicle is being sold for the sole purpose of dismantling the vehicle or for parts only.

765:11-1-4. Place of business

(a) An applicant for a rebuilder's certificate shall have an established place of business at the same location for which he is licensed to sell used motor vehicles. An applicant may have a facility separate from the licensed location where the rebuilding or repair of damaged vehicles takes place. Such facility shall be subject to inspection by employees of the Commission or law enforcement personnel to the same extent as authorized by 47 O.S. §581 et seq. and/or 47 O.S. § 591.1 et seq.

(b) The place of business of an applicant for a rebuilder's certificate shall also meet any applicable zoning, occupancy, and other requirement of the appropriate local government for the repair or reconstruction of motor vehicles at the rebuilder's location.

(c) In addition to complying with any local zoning ordinances, the Commission may require that the rebuilder's place of business have sight proof or opaque screening from adjoining property where it appears the use of the property by the rebuilder may be offensive to or detrimental to the adjoining properties.

~~(d) An applicant for a rebuilder's certificate shall also obtain the appropriate authorization from the Oklahoma Department of Environmental Quality or if no authorization is required, a waiver or statement from said Department that no authorization or permit is required.~~

SUBCHAPTER 3. AUTHORITY

765:11-3-1. Authority of a rebuilder

(a) A rebuilder who has been issued a rebuilder's certificate ~~and BID~~ card pursuant to 47 O.S. Section 591.5, shall be authorized to purchase repairable motor vehicles at salvage pools or salvage disposal sales for the purpose of rebuilding those vehicles. A rebuilder shall also be authorized to buy wrecked vehicles for the purpose of using the parts thereof to repair or rebuild the rebuilder's own vehicles.

(b) The holder of a rebuilder's certificate shall not have the authority to act as an automotive dismantler.

765:11-3-2. Authority of a BID card holder [REVOKED]

~~A BID card holder shall not be required to meet the licensing requirements of 47 O.S. Section 591.1 et seq. or the rules enacted by this Commission relating to automotivedismantler and parts recyclers in order to obtain a BID card.~~

SUBCHAPTER 4. OPERATION

765:11-4-1. Disclosure

A rebuilder shall disclose to any prospective purchaser on a form approved by the Commission if the rebuilt vehicle was manufactured with or without air bags, whether the air bags were not deployed and are operable, or were deployed and replaced and are operable, or the air bags were deployed and not replaced, or if the air bags are missing and inoperable.

SUBCHAPTER 5. ASSESSMENT OF FINE OR DENIAL, SUSPENSION, OR REVOCATION OF LICENSE

765:11-5-2. Grounds for denial, suspension, or revocation of a BID Card [REVOKED]

~~(a) A BID card may be denied, suspended or revoked for any reason enumerated in 47 O.S. Section 591.9 or 47 O.S. Section 591.11 except those reasons specifically relating to the operation of an automotive dismantler and parts recycling business.~~

~~(b) A BID card may be denied, suspended, or revoked pursuant to 47 O.S. Section 591.9(6) for operating as an automotive dismantler and parts recycler without a license.~~

[OAR Docket #15-454; filed 6-12-15]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 12. SALVAGE POOLS AND SALVAGE DISPOSAL SALES

[OAR Docket #15-455]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 9. Payments to the Commission
765:12-9-1 [AMENDED]
AUTHORITY:
Oklahoma Used Motor Vehicle and Parts Commission
47 O.S. Section 582(E)
75 O.S. Section 250
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
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INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
47 Okla. Stat. § 591.11 E. provides for the payment of a Two Dollar ($2.00) fee. The Rule Amendment changes the language fo the remittal requirement to correspond with the statutory fee in the event the statutory fee amount is changed.
CONTACT PERSON:
John W. Maile, Executive Director, Used Motor Vehicle and Parts Commission, 2401 N.W. 23rd Street, Suite 57, Oklahoma City, OK 73107, 405-521-3600, John.W.Maile@umvpc.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 9. PAYMENTS TO THE COMMISSION

765:12-9-1. Fees Report

Salvage pools or salvage disposal sales shall remit to the Commission a fee ~~of Two Dollars ($2.00)~~as provided by statute for each salvage vehicle sales transaction. Said fee shall be paid by the tenth of each month following the month in which the salvage vehicle sales transaction occurred. A summary report of all salvage vehicle sales transactions for the previous month shall accompany said remittance.

[OAR Docket #15-455; filed 6-12-15]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 15. USED MOTOR VEHICLE SALESPERSONS

[OAR Docket #15-456]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Licensing Qualifications, Procedures and Fees
765:15-1-4 [REVOKED]
765:15-1-5 [AMENDED]
765:15-1-6 [AMENDED]
AUTHORITY:
Oklahoma Used Motor Vehicle and Parts Commission
47 O.S. Section 582(E)
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INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The salesperson's bond requirement was eliminated from Okla. Stat. § 583 E. 3. and is eliminated in the Rule as well by amendment. The provisions for the issuance of a temporary salesperson's license authorized in 47 Okla. Stat. § 583 B. 4. are modified to reflect that a hearing is not required by law.
CONTACT PERSON:
John W. Maile, Executive Director, Used Motor Vehicle and Parts Commission, 2401 N.W. 23rd Street, Suite 57, Oklahoma City, OK 73107, 405-521-3600, John.W.Maile@umvpc.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 1. LICENSING QUALIFICATIONS, PROCEDURES AND FEES

765:15-1-4. Bond [REVOKED]

~~Each applicant for a used motor vehicle salesperson's license shall procure and file with the Commission a good and sufficient bond in the amount of One Thousand Dollars ($1,000). Such bond shall be filed on a form approved by the State Attorney General and furnished by the Commission. The conditions of the bond shall be that the applicant perform his duties as a used motor vehicle salesperson without fraud, fraudulent representations, and without violating any of the provisions of 47 O.S. Section 581 et seq.~~

765:15-1-5. Issuance of license

(a) **Prerequisite.** A license for a used motor vehicle salesperson will not be issued, renewed, or endorsed until the employing dealer is licensed and has certified that the applicant for said license is in his employ. Dealers' payrolls and other evidence will be checked to ascertain that all salespersons for such dealers are licensed. It is not intended that the dealer be required to pay for licenses for its salespersons. However, the dealer may do so on a reimbursable basis, or any other plan satisfactory to its dealership organization. All salespersons licenses will be sent to the dealer for distribution to the respective applicants, and the dealer will determine that all its personnel required to obtain licenses have done so.

(b) **Temporary license.**

(1) A temporary salesperson's license, salesperson's renewal, or reissue of a salesperson's license shall be deemed to have been issued when the appropriate application, ~~bond,~~ and fee have been properly addressed and mailed to the Commission, except as follows:

(A) in the case of incomplete application,

~~(B) in the case of improperly executed bond,~~

(B~~C~~) in the case of proper fee not being submitted,

(C~~D~~) in the case of applicant's having been previously denied a license with this Commission, ~~in which case a hearing may be held,~~ or

(D ~~E~~) in the case of applicant's having been convicted of a crime involving moral turpitude (act or behavior that gravely violates accepted moral standards of community), committed any unlawful act which resulted in revocation of similar license in another state, or committed a fraudulent act in selling or purchasing motor vehicles in such a manner as to cause injury to the public~~, in which case a hearing may be held~~.

(2) All temporary salesperson license applications shall be submitted for approval to issue permanent license at the first monthly Commission meeting following receipt of a completed application.~~, except in the cases stated in (D) and (E) of paragraph of (1) of this subsection~~

(c) **Permanent license.** A permanent salesperson's license shall be issued after approval of the applicant by the Commission. A salesperson's license shall consist of an identification card bearing the name, signature of the salesperson, ~~social security number~~driver's license number, name of employer, address, signature of the Executive Director, and the dealer's license number prefixed with UD (UD-0000). The card shall be carried upon his person at all times when acting as a used motor vehicle salesperson at licensee location.

(d) **Reciprocity.** A salesperson's license issued by the Oklahoma Motor Vehicle Commission shall be valid as a used motor vehicle salesperson's license for the dealer's franchised location.

765:15-1-6. Renewal of license

All ~~bonds and~~ licenses shall expire on the 31st day of December, following the date of issue and shall be nontransferable.

[OAR Docket #15-456; filed 6-12-15]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 20. WHOLESALE USED MOTOR VEHICLE DEALERS

[OAR Docket #15-457]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Licensing Qualifications, Procedures and Fees
765:20-1-7 [AMENDED]
Subchapter 5. Assessment of Fine or Denial, Suspension or Revocation of License
765-20-5-1 [AMENDED]
AUTHORITY:
Oklahoma Used Motor Vehicle and Parts Commission
47 O.S. Section 582(E)
75 O.S. Section 250
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INCORPORATIONS BY REFERENCE:
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ANALYSIS:
The Rule amendment in this chapter makes the Rule correspond with statute and corrects a previous scrivener's error.
CONTACT PERSON:
John W. Maile, Executive Director, Used Motor Vehicle and Parts Commission, 2401 N.W. 23rd Street, Suite 57, Oklahoma City, OK 73107, 405-521-3600, John.W.Maile@umvpc.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 1. LICENSING QUALIFICATIONS, PROCEDURES AND FEES

765:20-1-7. Changes

(a) **Ownership.** A change of ownership, including a change in a primary stockholder in the case of a corporation, or membership in the case of a limited liability company, shall require a new application and approval by the Commission before the business may begin operation.

(b) **Notification.** A change of ownership or any other change, such as change of name or address, which makes Commission records no longer accurate must be reported to the Commission immediately in writing on forms prescribed by the Commission for approval by the Commission. The dealership must meet all the requirements as prescribed for licensing. The Commission may revoke or suspend a license after it has been granted for change of condition resulting in failure to maintain the qualifications for license. Failure to complete the requirements for licensing at the new location within thirty (30) days shall result in suspension of the dealer's license until the licensing requirements are met. ~~The Commission may endorse changes on the license without charge.~~

SUBCHAPTER 5. ASSESSMENT OF FINE OR DENIAL, SUSPENSION, OR REVOCATION OF LICENSE

765:20-5-1. Grounds

(a) The Commission may deny an application for a license, or revoke or suspend a license after it has been granted for any of the reasons listed in 47 O.S. Sections 584 (1) through (7); for violation of any statute or regulation relating to the purchase, sale, display for sale, or transfer of a used motor vehicle; or if it is determined that the license is being or has been issued for the benefit of a person who would not or could not qualify for the license in his or her own right.

(b) The Commission may in addition to any other sanction or penalty assessed, impose a fine as authorized by law.

(c) The Commission shall revoke the license of a wholesale used motor vehicle dealer who sells a used motor vehicle to someone other than a ~~license~~licensed used motor vehicle dealer.

[OAR Docket #15-457; filed 6-12-15]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 25. AUTOMOTIVE DISMANTLER AND PARTS RECYCLERS

[OAR Docket #15-458]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Licensing Qualifications, Procedures and Fees
765:25-1-4 [AMENDED]
765:25-1-6 [AMENDED]
Subchapter 5. Assessment of Fine or Denial, Suspension or Revocation of License
765-25-5-1 [AMENDED]
AUTHORITY:
Oklahoma Used Motor Vehicle and Parts Commission
47 O.S. Section 582(E)
75 O.S. Section 250
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INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The Rule amendment in this Chapter adds the requirement of a federally required number to the dismantler requirements, and authorizes the imposition of any penalty authorized by Oklahoma law.
CONTACT PERSON:
John W. Maile, Executive Director, Used Motor Vehicle and Parts Commission, 2401 N.W. 23rd Street, Suite 57, Oklahoma City, OK 73107, 405-521-3600, John.W.Maile@umvpc.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 1. LICENSING QUALIFICATIONS, PROCEDURES AND FEES

765:25-1-4. Applicant

Every person, firm or corporation desiring to apply for an original license for the purpose of engaging in the business of an automotive dismantler and parts recycler shall apply in writing on a form to be prescribed by the Oklahoma Used Motor Vehicle and Parts Commission, which form shall include:

(1) the name of the applicant,

(2) the business name of the proposed business,

(3) the street address of the applicant's principal place of business,

(4) the type of business organization of the applicant whether a sole proprietorship, partnership, or corporation,

(5) the applicant and/or business organization's financial standing,

(6) the legal description of the proposed place of business, together with written verification from the appropriate local authorities that the place of business meets the licensing and zoning requirements of the municipality or county where located,

(7) sales tax permit number issued by the Oklahoma Tax Commission,

(8) authorization by the applicant for the Commission or its agent to inspect the register of purchases and sales of motor vehicles or parts thereof required to be kept by the applicant and authorization to inspect all vehicles or parts thereof on the register of purchases and sales wherever located and all vehicles or parts thereof located on applicant's property,

(9) storm water multi-sector general permit from the Department of Environmental Quality, ~~and~~

(10) National Motor Vehicle Title Information System number, and

(~~10~~ 11) such additional information as may be required by the Commission.

765:25-1-6. Renewal of license

(a) **Term.** Every license issued to an automotive dismantler and parts recycler hereunder shall be valid only for the calendar

year in which it is issued and shall be renewed on or before January 1st of each year.

(b) **Sales tax number.** All applications for renewal of license shall include the sales tax number issued to the applicant by the Oklahoma Tax Commission.

(c) **DEQ permit.** All applications for renewal of license shall include the authorization or permit number from the Department of Environmental Quality.

(d) **Renewal period.** Except as may otherwise be determined by the Commission licensees ~~and Buyer Identification Card holders~~ who do not renew on or before January 1st shall be required to meet all of the standards and requirements applicable to an original application for license in effect at that time, regardless of whether the standards and requirements when the applicant first licensed were more or less restrictive than current standards.

(e) **Date for submission.** A properly executed application for renewal of license, accompanied by the appropriate fee or fees, on forms supplied by the Commission, shall be submitted by December 1st, of each year. All licenses shall expire on December 31st of each year.

(f) **Requirements.** Effective on and after November 1, 1987, for a renewal application, the Commission in considering the continued eligibility of any licensee whose original license was issued on or after November 1, 1986, shall base its determinations on the following factors:

(1) whether the licensee has maintained substantial compliance with 47 O.S. Section 591.1 et.seq.

(A) Substantial compliance with 47 O.S. Section 591.2, paragraph 1, shall be determined from data supplied by the applicant in a sworn statement on a form supplied by the Commission that reports the number of vehicles acquired since approval of the prior license that have been or are being:

(i) dismantled for the purpose of selling the parts thereof,

(ii) held for resale as is, and

(iii) rebuilt for resale as roadworthy vehicles.

(B) From the information supplied for this item, the Commission shall determine whether the licensee's business is principally that of acquiring vehicles for the purpose of dismantling and selling the parts thereof.

(C) Substantial compliance with 47 O.S. Section 591.4, paragraph B shall be determined from any objections that may have been supplied by surrounding neighbors related to public or private nuisance complaints, and if requested by the Commission, evidence that the screening and/or fencing requirements are being met.

(2) whether the licensee has maintained substantial compliance with the regulations of this chapter.

SUBCHAPTER 5. ASSESSMENT OF FINE OR DENIAL, SUSPENSION, OR REVOCATION OF LICENSE

765:25-5-1. Grounds

The Commission is authorized to refuse a license to any person, firm, or corporation who does not meet the requirements of the original license; to assess fines, to cancel the license of a licensee for willful failure to continue to meet the requirements of 47 O.S. Section 591.1 et seq.; and is authorized to refuse, cancel, or revoke a license upon a felony conviction being rendered for violation of a state or federal law involving theft or for violation of the Oklahoma Certificate of Title Law or similar laws of other states, by an applicant, a licensee, a partner of an applicant or licensee, or director or manager in the case of a corporate applicant or licensee, or for any other grounds authorized by Oklahoma Statutes.

[OAR Docket #15-458; filed 6-12-15]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 35. MANUFACTURED HOME DEALERS

[OAR Docket #15-459]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Licensing Qualifications, Procedures and Fees
765:35-3-7 [AMENDED]
Subchapter 5. Operation
765-35-5-1 [AMENDED]
765-35-5-3 [AMENDED]
AUTHORITY:
Oklahoma Used Motor Vehicle and Parts Commission
47 O.S. Section 582(E)
75 O.S. Section 250
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ANALYSIS:
Manufactured home dealers' sales agreements are specifically regulated in 47 Okla. Stat. § 582 E. 1. a. & c. The Rule amendments in this chapter address issues relating to deposits on sales of manufactured home s and record keeping requirements involving said sales. An additional amendment again addresses a statutory change which made the rule in conflict with the law.
CONTACT PERSON:
John W. Maile, Executive Director, Used Motor Vehicle and Parts Commission, 2401 N.W. 23rd Street, Suite 57, Oklahoma City, OK 73107, 405-521-3600, John.W.Maile@umvpc.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 3. LICENSING QUALIFICATIONS, PROCEDURES AND FEES

765:35-3-7. Changes

(a) **Ownership.** A change of ownership, including a change in a primary stockholder in the case of a corporation, or membership in the case of a limited liability company, shall require a new application and approval by the Commission before the business may begin operation.

(b) **Notification.** A change of ownership or any other change, such as change of name or address, which makes Commission records no longer accurate must be reported to the Commission immediately in writing on forms prescribed by the Commission for approval by the Commission. The dealership must meet all the requirements as prescribed for licensing. The Commission may revoke or suspend a license after it has been granted for change of condition resulting in failure to maintain the qualifications for license. ~~The Commission may endorse changes on the license without charge.~~

SUBCHAPTER 5. OPERATION

765:35-5-1. Forms required

(a) **Forms.** The following forms shall be required in the sale of a manufactured home by a manufactured home dealer:

(1) Sales contract, bill of sale or buyer's order,

(2) Written notice of thirty (30) day title-transfer requirement and receipt for delivery of certificate of title to buyer,

(3) Condition of sale:

(A) warranty, or

(B) service contract, or

(C) warranty disclaimer,

(4) Finance or security agreement, if applicable, and

(5) Consignment agreement, if applicable.

(b) **Approval.** All forms must be approved by the Commission. The content and forms to be used shall be filed ten (10) days prior to use, and if not rejected in ten (10) days from the filing date, the forms will be conditionally approved.

(c) **Standards.** The forms required shall contain substantially the following information:

(1) Sales contract, bill of sale, or buyer's order. The sales contract, bill of sale, or buyer's order shall state the names of the parties, the make, model, tag number and serial number of the manufactured home subject to the transaction, if available, a statement of the selling amount, a description of the manufactured home traded in, if any, and the consideration given therefore, and

(2) Title and tax transfer notice requirement. It shall be the duty of every person licensed to sell manufactured homes to advise each purchaser in writing about his title requirements and payment of any taxes due.

(3) If a prospective purchaser makes a deposit of anything of value to obtain the option to complete a purchase (of a manufactured home) in the future, the dealer shall acknowledge the deposit in writing, the time period for which the option to purchase is valid, whether the deposit is refundable in whole or in part, and the conditions, if any under which the deposit may be refunded. The deposit shall be deemed refundable unless it is clearly stated in writing that the deposit or a portion thereof is non-refundable.

765:35-5-3. Records

(a) Each dealer shall keep for a period of five (5) years from the date of sale (or as required by any other federal, state, or local regulations), a record of the purchase and sale of each manufactured home he buys or sells, which shall show the name of the seller or buyer as the case may be, and a complete description of the manufactured home purchased or sold, and such other information as the Commission may prescribe. The records and title of manufactured homes shall be available upon request to authorized agents or employees of the Commission or any law enforcement officer of the State of Oklahoma. If it is determined that a licensee has knowingly provided false or misleading information when requested to provide records, the licensee may be subject to any appropriate sanction authorized by rule or statute.

(b) In addition to copies of all forms used in a sales transaction, the dealers shall keep a copy of the completely assigned manufacturer's statement of origin or equivalent document, certificate of title, as the case may be.

(c) If a dealer contracts for the installation of a manufactured home as a part of the sales contract, the dealer shall include in its records a copy of the written contract or copy of paid invoice with the installer if the installer is a third party, which copy shall include the license number of the installer.

[OAR Docket #15-459; filed 6-12-15]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 37. MANUFACTURED HOME INSTALLERS

[OAR Docket #15-460]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 7. Installation Standards
765:37-7-3 [AMENDED]
Subchapter 8. Certified Inspection Program [NEW]
765-37-8-1 [NEW]

AUTHORITY:
Oklahoma Used Motor Vehicle and Parts Commission
47 O.S. Section 582(E)

75 O.S. Section 250
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INCORPORATIONS BY REFERENCE:
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ANALYSIS:
Except for the correction of an imprecise form of measurement, the amendments in this chapter are made to conform with federal requirements relating to the inspection of manufactured home installation. These amendments bring the state withing federal guidelines.
CONTACT PERSON:
John W. Maile, Executive Director, Used Motor Vehicle and Parts Commission, 2401 N.W. 23rd Street, Suite 57, Oklahoma City, OK 73107, 405-521-3600, John.W.Maile@umvpc.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 7. INSTALLATION STANDARDS

765:37-7-3. Support Systems

(a) **Footers.** Footing pads, when used , shall consist of three 4 X 8 X 16 solid concrete blocks or a solid 4 X 16 X 16 concrete block or steel, ABS or treated lumber and be at least ~~20 X 20~~a minimum of 384 square inches in size, tested to a load-bearing capacity of not less than 6,000 pounds, and be installed on a soil with an allowable soil bearing pressure of at least 1,500 P.S.F. unless the site specific information requires the use of lower values based on soil classification and type. If these conditions are encountered, a registered professional engineer, registered architect or licensed geologist shall be consulted to determine the soil bearing pressure and footing sizes required. Other material providing equivalent load-bearing capacity and resistance to decay and which is approved by the manufacturer and its DAPIA may be used. All organic material (i.e., grass, loose top soil, etc.) must be removed from under each foundation support. The foundation for each manufactured home shall be installed on firm undisturbed soil or fill with at least 90 percent soil compaction. Supporting information, i.e., proper soil testing, such as by a pentrometer, may be used to change the assumed P.S.F.

(b) **Piers.**

(1) Piers up to 36 inches in height as measured from the top of the footer to the bottom of the frame shall be constructed of single 8"x8"x16 open-celled concrete blocks with cells aligned vertically and 16 inch dimension perpendicular to the I-beam with 2"x8"x16" or 4"x8"x16" solid concrete blocks. Such piers may be capped, between the blocks and the I-beam, with 1"x8"x16" or 2"x8"x16" (nominal) wood plates, not to exceed 3-1/4 inches, and wedges driven from both sides of the I-beam, not to exceed 1 inch in thickness. Alternatively, piers up to 36 inches in height may be manufactured steel piers, provided they are rated, listed and labeled for the required load capacity. Adjustable risers may not extend more than 2 inches when finally positioned. Other engineering-approved, rated and listed systems may be used. Minimum height of any pier, as measured from the top of the footing to the bottom of the I-beam shall be 12 inches.

(2) Piers from 36 inches to 67 inches in height as measured from the top of the footer to the bottom of the frame and all corner piers over three blocks high shall be constructed of doubled, interlocked 8"x8"x16" two-celled concrete blocks with cells aligned vertically, topped with two 4"x8"x16" solid concrete blocks. Such piers may be capped between the blocks and the I-beam with not more than two 1"x8"x16" or one 2"x8"x16"(nominal) wood plates, and wedges driven from both sides of the I-beam not to exceed 1 inch in thickness.

(3) Piers over 67 inches in height as measured from the top of the footer to the bottom of the frame shall be designed by a professional engineer or registered architect in accordance HUD standards. (4) Miscellaneous other pier requirements shall be as follows:

(A) Mating-line or perimeter piers shall be measured from the footer to the bottom of the home, and are allowed to up to 12" higher than the I beam piers.

(B) Any concrete footer/pier system that meets or exceeds these standards is acceptable.

(c) **Spacing.**

(1) Pier spacing shall be measured from center to center of piers.

(2) For single section homes the center of end piers shall not exceed 2 feet from the frame-ends. Piers are to be placed under each longitudinal mainframe member, not to exceed 6 feet on-center. The frame piers must be installed so that the long sides are at right angles or perpendicular to the main frame member. Side wall openings 48 inches or wider, porch transition, sliding glass doors must have perimeter piers, installed with the long dimension parallel to the perimeter rail or be supported by additional outriggers or floor joists, or by a 4 X 4 wood timber supporting a minimum of two joists under both sides of the opening.

(3) For multi-section homes the center of end piers shall not exceed 2 feet from the frame-ends. Piers are to be placed under each longitudinal mainframe member at a spacing, not to exceed 6 feet on-center. The frame piers must be installed so that the long sides are at right angles or perpendicular to the main frame member. Side wall openings 48 inches or wider, porch transition, sliding glass

doors must have perimeter piers, installed with the long dimension parallel to the perimeter rail or be supported by additional outriggers or floor joists, or by a 4 X 4 wood timber supporting a minimum of two joists, under both sides of the opening. On new homes marriage-line piers shall be located at each position marked on the underside of the home or in accordance with the manufacturer's installation instructions shipped with each home by the manufacturer, specifying location and required load capacity of each such pier.

SUBCHAPTER 8. CERTIFIED INSPECTION PROGRAM

765:37-8-1. New Manufactured Home Inspections

(a) All new manufactured home installations shall be inspected by a certified installation inspector.

(b) In addition to certified installation inspectors who meet the qualifications set forth herein, a certified installation inspector may include a HUD certified DAPIA or IPIA, an engineer experienced in manufactured home installations, an inspector certified by authorities with jurisdiction where the manufactured home is installed or a qualified Commission employee.

(c) The purpose of the inspection of the installation by a certified inspector is to verify that the installation was performed in a manner which complies with new manufactured home installation standards.

(d) The Manufactured Home Advisory Committee shall review and recommend the educational and experiential standards for certified installation inspectors to the Commission for approval. Said standards shall include at a minimum, eight (8) hours of training in a classroom setting and four (4) hours in sited training. Said standards shall be published on the Commission website and distributed to every licensed installer. Such standards may be changed or modified as the need for changes or modifications become apparent.

(e) An applicant for a certified installation inspector shall be approved by the Manufactured Home Advisory Committee and the Commission.

(f) A certified installation inspector shall be authorized to perform an installation inspection on any new manufactured home installation performed within the State of Oklahoma.

(g) The Manufactured Home Advisory Committee shall recommend the qualifications for instructors of candidates for designation as certified installation instructors and submit said qualifications to the Commission for approval.

[OAR Docket #15-460; filed 6-12-15]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION
CHAPTER 40. CRUSHERS

[OAR Docket #15-461]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Licensing Qualifications, Procedures and Fees [NEW]
765:40-1-1 [NEW]
765:40-1-2 [NEW]
765:40-1-3 [NEW]
765:40-1-4 [NEW]
765:40-1-5 [NEW]
765:40-1-6 [NEW]
765:40-1-7 [NEW]
765:40-1-8 [NEW]
Subchapter 3. Operation [NEW]
765:40-3-1 [NEW]
765:40-3-2 [NEW]
Subchapter 5. Assesment of Fine or Denial, Suspension, or Revocation of License [NEW]
765:40-5-1 [NEW]
765:40-5-2 [NEW]
AUTHORITY:
Oklahoma Used Motor Vehicle and Parts Commission
47 O.S. Section 582(E)(1)
47 O.S. Section 592.9 A
47 O.S. Section 592.6 C
75 O.S. Section 302(A)(1)
75 O.S. Section 307
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765:40-1-2 [NEW]
765:40-1-3 [NEW]
765:40-1-4 [NEW]
765:40-1-5 [NEW]
765:40-1-6 [NEW]
765:40-1-7 [NEW]
765:40-1-8 [NEW]
Subchapter 3. Operation [NEW]
765:40-3-1 [NEW]
765:40-3-2 [NEW]
Subchapter 5. Assesment of Fine or Denial, Suspension, or Revocation of License [NEW]
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765:40-5-2 [NEW]
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INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
This chapter makes permanent emergency Rules initiated when the Legislature enacted legislation requiring the licensing of crushers in 47 Okla. Stat. § 592.1 et.seq.
CONTACT PERSON:
John W. Maile, Executive Director, Used Motor Vehicle and Parts Commission, 2401 N.W. 23rd Street, Suite 57, Oklahoma City, OK 73107, 405-521-3600, John.W.Maile@umvpc.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 1. LICENSING QUALIFICATIONS, PROCEDURES AND FEES

765:40-1-1. Purpose

The Rules of this Chapter have been adopted for the purpose of complying with the provisions of 75 O. S. Section 250 et. seq., 47 O. S. Section 582(E), 47 O. S. Section 592.6(C.) and 47 O. S. Section 592.9 (A.). This Chapter will provide a description of the fees for the licenses and functions authorized by statute, the qualifications for obtaining and maintaining a crusher license, operation of a crusher under this license, and the grounds and procedures for denial, suspension or revocation of a crusher's license.

765:40-1-2. Definitions

The following words or terms, when used in this Chapter, shall have the following meaning:

"Crusher" shall be defined as set forth in 47 O. S. Section 592.2.(2.).

"Scrap Metal Dealer" shall be defined as set forth in 2 O. S. Section 11-91 (7).

765:40-1-3. Fees

The Commission shall prescribe by rule a fee for each of the following in the amount

stated herein:

(1) The fee required for an initial application, which shall be Three Hundred Dollars ($300.00).

(2) An investigation fee, which shall be Three Hundred Dollars ($300.00). The investigation fee shall be waived for an applicant licensed as an automotive dismantler prior to applying to be licensed as a crusher.

(3) A fee required for an application for renewal of a license, which shall be Three Hundred Dollars ($300.00).

(4) A late fee for renewals not received by June 15 of each year, which shall be One Hundred Fifty ($150.00).

(5) A fee for a change of name of the licensee, which shall be Fifty Dollars ($50.00).

(6) A fee for a change of location of the licensee, which shall be One Hundred Dollars ($100.00).

(7) A fee for a duplicate license, which shall be Twenty Five Dollars ($25.00).

(8) A fee for a returned check, which shall be Seventy Five Dollars ($75.00).

765:40-1-4. Applicant

(a) **Information required.** An applicant shall provide sufficient information on the application or otherwise to enable the Commission to determine whether the applicant should be granted a license. The information shall include:

(1) Information as set forth in the application form relating to the person or persons applying for the license,

(2) Information relating to the applicant's financial standing,

(3) Information relating to the applicant's business integrity, the applicant's experience in the same or similar businesses, and the applicant's business history,

(4) Whether the applicant or anyone acting for the applicant in the business has been convicted of a felony.

(5) Whether the applicant will be personally involved in the operation of the business or whether some other person shall be the primary participant in the business,

(6) Whether the applicant will devote full or part time to the business,

(7) Whether the applicant is able to properly conduct the business, and,

(8) Such other pertinent information consistent with the safeguarding of the public interest and welfare.

(b) **Application required.** Applications for license shall be verified by the oath or affirmation of the applicant and shall be on forms prescribed by the Commission and furnished to such applicants. The applications shall contain such information as the Commission deems necessary to enable it to fully determine the qualifications and eligibility of the applicant for the license.

765:40-1-5. Bond

Each applicant for a crusher license shall procure and file with the Commission a good and sufficient bond in the amount required by law. The bond shall be approved as to form by the Attorney General. The bond form shall contain provisions relating to the bond amount, parties responsible for payment of bond claims, and parties who may make claims on bonds and priorities of claimants, if applicable.

765:40-1-6. Issuance of license

(a) **Name.** A crusher license will be issued in the legal name of the business as identified on the application for license. A license will not be issued in a name which is offensive to a reasonable person's sensibilities, nor any name which is misleading or confusing to those with whom the licensee deals.

(b) **Certificate.** A crusher's license shall consist of a signed certificate bearing the official seal of the Commission and shall specify the name and location of the place of business and assigned license number, which shall be posted in a conspicuous

place in the crusher's place of business. The crusher license number will be prefixed with CR, followed by a four digit number and then the current year of license. (CR-0000-00).

(c) **Card and Identification sticker.** The licensee will receive a gratis license card which shall be carried upon the licensee's person at all times when acting as a crusher. An identifying sticker shall be issued to licensee for each crusher, which shall be placed on a conspicuous location on the crusher.

(d) **Beginning business.** No applicant for a crusher license shall conduct business until such time as the Commission has issued a license to the applicant.

765:40-1-7. Renewal of license

All bonds and licenses issued under this Chapter shall expire on the 30th day of June, following the date of issue and shall be nontransferable. All applications for renewal shall be submitted by the 1st day of June of each year. Renewals received after June 15 shall be assessed a late fee. If application has not been made for renewal of license, such license shall expire on June 30th, and it shall be illegal for such former licensee to represent himself as a crusher thereafter.

765:40-1-8. Changes

(a) **Ownership.** A change of ownership, including a change in a primary stockholder in the case of a corporation, or membership in the case of a limited liability company, shall require a new application and approval by the Commission before the business may begin operation.

(b) **Notification.** A change of ownership or any other change, such as a change of name or address, which makes Commission records no longer accurate must be reported to the Commission immediately in writing on forms prescribed by the Commission for approval by the Commission. The crusher must meet all the requirements as prescribed for licensing. The Commission may revoke or suspend a license after it has been granted for change of condition resulting in failure to maintain the qualifications for license. Failure to complete the requirements for licensing after change of conditions within thirty (30) days shall result in suspension of the dealer's license until the licensing requirements are met.

SUBCHAPTER 3. OPERATION

765:10-3-1. Proof of ownership

(a) **Documentation required.** Prior to the purchase of a used motor vehicle, trailer, or nonmotorized recreational vehicle a crusher shall require one of the following documents as proof of ownership from the person selling the used motor vehicle, trailer, or nonmotorized recreational vehicle:

(1) a certificate of title in the name of the seller that shows no outstanding liens,

(2) a notarized power of attorney from the individual on the certificate of title authorizing the seller to dispose of the vehicle on behalf of the owner,

(3) a bill of sale from the owner as identified by the certificate of title to the person presenting the vehicle to be crushed or shredded,

(4) a statement of ownership from the seller stating that the vehicle to be crushed was purchased from the lawful owner, accompanied by a bill of sale from the lawful owner including a statement that there are no outstanding liens on the vehicle, and a statement that the vehicle was inoperable or incapable of operation or use on the highway and has no resale value except as scrap,

(5) paperwork from a licensed wrecker operator showing that the wrecker operator has properly foreclosed its lien on the vehicle to be crushed or shredded and that the person selling the vehicle is the owner as shown on the return of sale in the foreclosure form.

(6) a bill of sale from a property owner together with proof of ownership or leasehold interest of the land from which the vehicle to be crushed was removed and a current printout from the Oklahoma Tax Commission Motor Vehicle Division showing that there is no record of the vehicle in its records or that the owner of the vehicle according to its records is the property owner.

(7) a document that upon presentation to the Oklahoma Tax Commission could be the basis for the issuance of a certificate of title in the name of the person presenting the vehicle to be crushed, such as a Court Order stating that the person is the owner of the vehicle.

(b) **Holding period required.** A crusher shall:

(1) Make available a report or copy within three (3) days of the purchase of a vehicle to the local enforcement agency of the municipality or other political subdivision in which the crusher is located or temporarily operating. If the crusher is operating within the city limits of a municipality, the crusher shall submit its report to the police department for the municipality and to the County Sheriff's office for the County in which the municipality lies. If the crusher is located outside of municipal limits, the report shall be submitted to the County Sheriff's Office only. With the report shall be an acknowledgment form which the representative of the law enforcement agency shall sign acknowledging receipt of the report, the original of which shall become part of the crusher's records. Such copy or report shall be shown upon request to the representative of the Commission or to any authorized peace officer. The report shall be on a form approved by the Commission and shall contain the following information:

(A) The name, address and telephone number of the crusher whereby the crusher operator may be immediately contacted,

(B) The name, address, race, sex, weight, height, date of birth and identifying number of the seller as verified by either a state-issued identification card, driver's license or federal government-issued identification card, or, in lieu of other form of identification card, a readable fingerprint of the seller's right or left index finger. If a fingerprint of either index finger cannot be obtained, a readable fingerprint of the left thumb or any finger on the left hand shall be taken. If

no fingerprint from the left hand can be taken, nor the right index finger, then a readable fingerprint from the right hand shall be taken.

(C) A description of the vehicle, the manufacturer of the vehicle, the vehicle identification numbers of the vehicle, and the date and time of the purchase of the vehicle.

(D) A description of the ownership document provided by the seller.

(2) Hold the vehicles reported in the same condition in which they were purchased for a period of three (3) days after submitting the report required in paragraph (1) above. The crusher shall retain a vehicle in the same condition in which it was purchased for a period up to thirty (30) days, in the event a representative of the Commission or a law enforcement officer requests that the crusher do so. Retention of a vehicle beyond the thirty (30) day period shall require a Court Order or administrative Order from the Commission.

(c) **Exception.** A licensed automotive dismantler shall not be required to produce proof of ownership to a crusher before selling vehicles to the crusher if the dismantler purchased the vehicles in the ordinary course of business and the dismantler has purchase records for the vehicles to be crushed.

(d) **No re-assignment.** A crusher shall not have the right of reassignment of a certificate of title.

(e) **Records retention:** A crusher shall keep the records of its purchases for a period of three (3) years from the date of purchase. The records shall be kept at the crusher's licensed place of business and shall be available to any representative of the Commission or any law enforcement officer upon request.

765:40-3-2. Reading of Rules required

Prior to the issuance of a license to a crusher, the applicant shall be given a copy of the Rules relating to the operation of a crusher business and the person operating the crusher business shall verify in writing that that person has read the Rules and agrees to conduct the crusher business within the guidelines of the Rules.

SUBCHAPTER 5. ASSESSMENT OF FINE OR DENIAL, SUSPENSION, OR REVOCATION OF LICENSE

765:10-5-1. Grounds

(a) The Commission may deny an application for a license, or revoke or suspend a license after it has been granted for any of the reasons listed in 47 O. S. Sections 592.4 and 47 O. S. Section 592.10; for willful violation of any statute or regulation relating to the purchase, sale or transfer of a used motor vehicle, trailer, or nonmotorized recreational vehicle; or, if it is determined that the license is being or has been issued for the benefit of a person who would not or could not qualify for the license in his or her own right.

(b) The Commission may in addition to any other sanction or penalty assessed, or in lieu of the assessment of any other sanction or penalty, impose a fine as authorized by law.

765:10-5-2. Prohibition

A person whose license has been denied or revoked or whose license was surrendered in lieu of revocation or under circumstances such that said license could have been revoked, shall not have any financial interest of any kind in a crusher business, nor shall that person participate in any way, including in an advisory position, in the operation of the crusher business.

[OAR Docket #15-461; filed 6-12-15]

TITLE 777. STATEWIDE VIRTUAL CHARTER SCHOOL BOARD CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #15-567]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
777:1-1-9. Individual proceedings [NEW]
AUTHORITY:
70 O.S. § 3-145.4; 75 O.S. § 302; 75 O.S. §§ 305-323; Statewide Virtual Charter School Board
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
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N/A
AVAILABILITY:
8:00 a.m. to 4:30 p.m., Monday through Friday at Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma.
ANALYSIS:
The new rule sets forth procedures for individual proceedings conducted in accordance with the provisions of the Administrative Procedures Act by the new Statewide Virtual Charter School Board established pursuant to 70 O.S. §3-145.1. The proposed rules are necessary to comply with the "Required rule" provisions of the Administrative Procedures Act at 75 O.S. § 302(A) and accompanying regulations at 655:10-5-7, which require every agency to promulgate certain organizational and procedural rules.
CONTACT PERSON:
Rebecca Wilkinson, Executive Director, Statewide Virtual Charter School Board, Room 437, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Telephone number: (405) 522-0717

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 1. GENERAL PROVISIONS

777:1-1-9. Individual proceedings

(a) **Definitions.** The following words and terms, when used in this subchapter, shall have the following meaning:

(1) **"Board"** shall mean the Statewide Virtual Charter School Board.

(2) **"Individual proceeding"** shall have the meaning set forth in the Administrative Procedures Act at 75 O.S. § 250.3.

(b) **Computation of time.** Any period of time prescribed pursuant to the provision of this rule shall be computed in accordance with the provisions of the Administrative Procedures Act at 70 O.S. § 250.8.

(c) **Petitions.** An individual proceeding shall be initiated by filing a petition with the Secretary of the Statewide Virtual Charter School Board. The petition shall meet all of the following requirements:

(1) The Petition must include:

(A) A statement of the legal authority and jurisdiction under which the petitioner seeks to initiate the proceeding and the hearing is to be held;

(B) A reference to each particular statute and/or rule involved;

(C) A short and plain statement of the allegations asserted; and

(D) A statement or description of the request for the relief petitioner seeks from the Board.

(2) The Petition must clearly identify the petitioner(s) and be signed by the petitioner or counsel for the petitioner.

(d) **Informal disposition.** Nothing in this Section shall prevent informal disposition of a petition from being made by stipulation, agreed settlement, consent order, or default, unless otherwise precluded by law. In the event of an informal disposition of a petition, written notice signed by each party or counsel representatives shall be delivered to the Secretary of the Statewide Virtual Charter School Board prior to the time of the scheduled hearing.

(e) **Right to counsel.** All parties to an individual proceeding shall have the right to representation by legal counsel in accordance with the provisions of 75 O.S. § 310. The Board may be represented by its own counsel, or, if deemed necessary by the Chairperson of the Board, a request may be made of the Attorney General to provide counsel to the Board to rule on questions of admissibility of evidence, competency of witnesses, and any other questions of law. In the event that counsel is not requested from the Attorney General, the Chairperson of the Board or a hearing officer appointed by the Board will rule on the evidence, competency of the witnesses and other questions of law.

(f) **Entry of appearance.** All parties or attorneys representing parties in an individual proceeding shall file an entry of appearance. The entry of appearance shall constitute the address of record for the party at which all documents in the individual proceedings will be served. The entry of appearance shall meet all of the following requirements:

(1) The case caption of the individual proceeding;

(2) The name and signature of the party or parties entering an appearance in the individual proceeding;

(3) The mailing address, telephone, fax number and e-mail address of the party or parties entering an appearance in the individual proceeding or, if represented by counsel:

(A) The name and signature of the attorney or attorneys entering an appearance in the individual proceeding on behalf of the party or parties;

(B) The name of the law firm of the attorney(s), if any; and

(C) The Oklahoma Bar Association number of the attorney(s).

(g) **Motions.** All requests for action in an individual proceeding before the Board shall be made in the form of a motion. Motions shall be filed with the Secretary of the Board, and shall comply with all of the following requirements:

(1) The motion must clearly and specifically state:

(A) The facts upon which the request is based;

(B) All legal grounds in support of the request; and

(C) The action or relief sought.

(2) The motion must be signed by the movant or counsel for the movant;

(3) The motion must include the name and contact information of record of the movant or counsel for the movant;

(4) The motion must be signed by the movant or counsel for the movant;

(5) The motion must be timely served upon all parties to the proceeding and shall include a certificate of service that complies with the provisions of (h)(3) of this Section.

(h) **Service.** Methods of service and proof of service of any notice, pleading, order, or other document required by this Section shall comply with the following provisions:

(1) **Methods of service.** Service of any notice, pleading, or order required by this Section shall be made by one of the following methods:

(A) By personal delivery, served by a person licensed to make service of process in civil cases;

(B) By certified mail with delivery shown by return receipt. Service by certified mail shall be effective on the date of receipt or, if refused, on the date refusal by the Respondent. Acceptance or refusal by any officer of a business or an authorized agent for a business shall constitute acceptance or refusal by the party addressed;

(C) By publication if it is shown that service cannot be made by any other means despite the exercise of due diligence; or

(D) Any other method authorized by 12 O.S. § 2005(B).

(2) **Proof of service.** Proof of service of any petition to initiate an individual proceeding shall be filed with the Secretary of the State Board of Education. Acknowledgment in writing of the document by the recipient, or appearance by the recipient at a hearing without objection to service, shall be considered proof of service.

(3) **Certificates of service.** All documents filed with the Secretary of the State in a pending individual proceeding and all documents requiring service in accordance with the provisions of this Section shall include a Certificate of Service that meets all of the following requirements:

(A) The Certificate of Service shall state "I hereby certify that on this _____ day of _____, _____, a copy of the foregoing document was mailed, postage prepaid, to:" and shall identify the name and address of all parties to whom the document was served.

(B) The Certificate of Service shall be signed by the party or counsel for the party charged with service of the document.

(i) **Formal hearing procedures.** A hearing on a petition shall be conducted by the Chairman of the Board or the hearing officer in accordance with 75 O.S. § 310 and the following procedures:

(1) **Initial hearing.** When a petition is filed, the Secretary shall promptly set the petition for an initial hearing. Notice of the hearing shall comply with the requirements of 75 O.S. § 309. At the hearing, the Board may choose to consider evidence and arguments in support of or in opposition to the petition, the Board may set the matter for further hearing.

(2) **Appointment of a hearing officer.** The Chairman of the Board shall preside over any hearing conducted in an individual proceeding in accordance with the provisions of this Section. Alternatively, the Board, at its discretion, may utilize a hearing officer to conduct the hearing. If utilized, the hearing officer shall be appointed by the Chairperson of the Board upon a vote of the majority of the members of the Board.

(3) **Continuances.** Any party to the proceeding may request a continuance of the scheduled hearing in accordance with the following provisions;

(A) A party may request to continue a hearing scheduled in an individual proceeding by filing a motion for continuance with the Secretary of the Board. The motion for continuance shall meet all of the following requirements:

(i) The motion shall comply with all of the requirements of (g) of this Section;

(ii) The motion shall be filed at least five (5) business days prior to the scheduled hearing date, provided that this time requirement may be waived by the Board or hearing officer for good cause shown by the movant.

(B) The Board may continue a scheduled hearing by submitting written notification to all parties via certified mail, return receipt requested, or by electronic mail at least five (5) business days prior to the date of the scheduled hearing, provided that the time requirement may be waived by the Board or the hearing officer for good cause shown by the Board or counsel for the Board.

(C) If a motion for continuance is unopposed and the Board finds good cause for granting the motion, counsel for the Board shall prepare and sign a continuance order. The continuance order shall be filed with the Secretary of the Board and served in accordance with the requirements of (h) of this Section.

(D) If a motion for continuance is opposed, the non-moving party shall file a motion opposing the continuance stating all factual and legal grounds for denial of the motion. The Board or the hearing officer shall issue an order concerning the motion as soon as possible prior to the hearing. The order shall be filed with the Secretary of the Board, and copies of the order served in accordance with the provisions of (h) of this Section and by email if possible.

(4) **Discovery and subpoenas.** The Board or the hearing officer may require parties to an individual proceeding to attend discovery when necessary and appropriate for prompt adjudication of an individual proceeding conducted in accordance with the provisions of this Section. Discovery shall be conducted in accordance with 75 O.S. § 315 and the following provisions:

(A) **Depositions.** The parties, upon notice may take depositions of witnesses in the same manner prescribed for depositions in civil actions in the district courts of the State of Oklahoma. The depositions may be admitted into evidence by the Board or the hearing officer in the same manner as other evidence. Costs of depositions shall be borne by the deposing party.

(B) **Subpoenas.** Subpoenas for the attendance of a witness or for production of evidence may be issued in accordance with the following provisions:

(i) **Issuance of a subpoena.** The Chairman of the Board or the hearing examiner may direct the Secretary of the Board to issue a subpoena upon the motion of a party. The signature of the Secretary shall be sufficient authentication for issuance of any subpoena. A motion for issuance of a subpoena shall comply with the provisions of (h) of this Section and shall be filed with sufficient time to permit service of the subpoena at least five (5) business days prior to the hearing at which the attendance of the witness or ten (10) business days prior to the date production of records is required.

(ii) **Service of a subpoena.** Subpoenas shall be served in any manner prescribed for service of a subpoena in a civil action in the district courts of the State of Oklahoma.

(iii) **Objections to and compliance with subpoenas.** Any party to the proceeding may move to quash a subpoena or subpoenas duces tecum issued

in accordance with the provisions of this Section, provided that, prior to quashing a subpoena or subpoenas duces tecum the agency shall give notice to all parties. A subpoena or subpoenas duces tecum may not be quashed if any party objects.

(iv) **Enforcement of subpoenas.** Upon the failure of any person to obey a subpoena, or upon the refusal of any witness to be sworn or make an affirmation or to answer a question put to her or him in the course of any individual proceeding, the Board shall consider the issue of enforcement of the subpoena as soon as convenient. By resolution, the Board may direct initiation of appropriate judicial proceedings necessary to enforce the subpoena. Meanwhile, the hearing or other matters shall proceed, so far as is possible, but the Board or the hearing officer, at its discretion at any time may order a stay or continuance of the proceedings for such time as may be necessary to secure a final ruling in the compliance proceedings.

(v) **Costs of issuance and service of subpoenas.** The costs covering the issuance and service of subpoenas and all witness fees incurred on behalf of a party to the proceedings, other than the Board, shall be borne by the party on whose behalf they are incurred, provided that the Board in its final order may tax such costs to another party if justice so requires.

(j) **Disqualification of a Board member or hearing officer.** A Board member or hearing officer shall withdraw from any individual proceeding in which he or she cannot accord a fair and impartial hearing or consideration. Any party may request the disqualification on the ground of his or her inability to give a fair and impartial hearing by filing an affidavit promptly upon discovery of the alleged disqualification, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. The issue shall be determined promptly by the Board, or if it affects a member of the Board, by the remaining members thereof, if a quorum. Upon the entry of an order of disqualification affecting a hearing officer, the Board shall either assign a replacement hearing officer, or conduct the hearing itself. Upon the entry of an order of disqualification affecting a Board member, the Governor immediately shall appoint a member pro tempore to sit in place of the disqualified member in that proceeding.

(k) **Presentation and consideration of evidence.** Presentation and consideration of evidence shall be conducted in accordance with the following procedures:

(1) **Witness and exhibit lists.** The parties to the hearing shall exchange witness and exhibit lists no later than five (5) business days prior to the hearing.

(2) **Admissibility and consideration of evidence.** The Board or hearing examiner may determine the order in which evidence shall be received and presented. Admission and consideration of evidence in an individual proceeding conducted in accordance with the provisions of this Section shall be conducted in accordance with the Administrative Procedures Act at 75 O.S. §§ 309 through 326 and the following provisions:

(A) **Official notice.** The Board or hearing officer may take notice of judicially cognizable facts or of generally recognized technical or scientific facts within the specialized knowledge of the State Department of Education. The Board or hearing officer shall give notice to all parties, prior to, or at the hearing, of any facts of which it proposes to take official notice. Any party or her/his attorney may request that official notice be taken of any fact qualified for such notice by the statutes of this state. If such official notice is taken, it shall be stated in the record, and all parties shall have opportunity to contest and give evidence in rebuttal or derogation of the official notice.

(B) **Exclusion of witnesses.** A party may request the exclusion of witnesses to the extent and for the purposes stated in 12 O.S. § 2615. Exclusion of a witness shall not be considered a violation of the Oklahoma Open Meeting Act.

(C) **Testimony of witnesses.** All testimony of witnesess presented by parties shall be made under oath or affirmation. A party may conduct cross-examination of witnesses called by other parties. Witnesses may also be questioned by the Board or the hearing officer.

(D) **Objections to evidence.** Objections to evidence may be made and shall be included in the record of the proceedings.

(E) **Documentary evidence and authentication.** Documentary evidence may be received in the form of copies or excerpts. Parties may challenge the authenticity of any copies. Any part of the evidence may be received in written form, when a hearing will be expedited and the interests of the parties will not be prejudiced.

(l) **Order of procedure.** The order of procedure at the hearing shall be as follows:

(1) Opening statements by legal counsel of both parties;

(2) Presentation of evidence by both parties followed by cross-examination of witnesses, and questions by State Board members or the hearing officer;

(3) Closing arguments by legal counsel of both parties; and

(4) Submission of case to the Board or the hearing officer for decision.

(m) **Dismissal of an action.** Upon a hearing, if the petitioner fails to show a prima facie case for lack of sufficient evidence, the Board may dismiss the petition upon grounds of failure to prove sufficient facts in support of the petition or upon the recommendation of the hearing examiner on the same grounds.

(n) **Deliberations and decisions.** Deliberations by the Board or the hearing officer in an individual proceeding may be held in executive session pursuant to the provisions of the Open Meeting Act set forth at 25 O.S. § 307.

(o) **Decision.** Decisions shall be issued in accordance with the following procedures:

(1) After hearing all evidence, and all witnesses, the Board or, if applicable, the hearing officer, shall render a decision on the petition.

(2) The decision shall be announced at the conclusion of the hearing and notification of that decision shall be by certified or registered mail, restricted delivery with return receipt requested to the petitioner.

(3) If the petitioner fails to appear at the scheduled hearing without prior notification within the time frame to request a stay or continuance set forth in (i) of this Section and without a demonstration of good cause, or fails to prove the allegations by clear and convincing evidence, the petition shall be dismissed.

(p) **Findings of fact and conclusions of law.** After the decision is announced, but before issuance of the final order, if the Board has not heard the case or read the record of the individual proceeding, the Board or hearing officer shall provide the parties with an opportunity to prepare and submit proposed findings of fact and conclusions of law in accordance with the provisions of 75 O.S. § 311. After the parties have been given notice and an opportunity to file exceptions, present briefs and oral arguments to the proposed findings of fact and conclusions of law, the Board may take action to accept, reject, or modify the proposed Findings and Conclusions of the hearing officer. The Board shall render findings of fact and conclusions of law. All findings of fact made by the Board shall be based exclusively on the evidence presented during the course of the hearing or previously filed briefs, (made a part of the record), of the testimony of witnesses taken under oath.

(q) **Final order.** As the final determination of the matter, the final order shall constitute the final agency order and shall comply with the requirements set forth at 75 O.S. § 312. If no motion for rehearing, reopening or reconsideration of the order is filed in accordance with (t) of this Section, the final agency order shall represent exhaustion of all administrative remedies. All final orders in an individual proceeding shall be in writing and made a part of the record. Final orders are to be issued and signed by the Chairperson of the Board or the hearing officer for transmission to the parties by the Secretary of the Board. Within five (5) business days of the date of issuance of the final order, parties shall be notified of a final order either personally or by certified mail, return receipt requested. Upon request, a copy of the order shall be delivered or mailed to each party and the party's attorney of record, if any.

(r) **Communication with parties.** Unless required for the disposition of ex parte matters authorized by law, the Chairperson and the members of the Board, the hearing officer, or the employees or the agents of the Board shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his or her representative except upon notice and opportunity for all parties to participate. The Chairperson and members of the Board or their employees may communicate with one another and have the aid and advice of one or more personal assistants. Advice may also be secured from the Attorney General's office.

(s) **Record of hearing.** The record of the hearing shall be set forth in such form and detail as the Chairperson or the Board may direct.

(1) In accordance with the requirements of 75 O.S. § 309, the record shall include:

(A) All pleadings, motions, and intermediate rulings;

(B) Evidence received or considered during the individual proceeding;

(C) A statement of matters officially noticed;

(D) Questions and offers of proof, objections, and rulings thereon;

(E) Proposed findings and exceptions;

(F) Any decision, opinion, or report by the Board or a hearing officer presiding at the hearing; and

(G) All other evidence or data submitted to the Board or hearing officer in connection with their consideration of the case.

(2) The Secretary shall ensure that all proceedings, except for executive sessions, are electronically recorded. The recording shall be made and maintained in accordance with the requirements of 75 O.S. § 309, and a copy shall be provided to any party to the proceeding upon request. The Board may, but is not required to direct the recording of a proceeding to be fully transcribed and have a copy of the transcript placed on file in the Secretary's office. Parties to the proceeding may have the proceedings transcribed by a court reporter at their own expense.

(t) **Rehearing, reopening or reconsideration of an order.** The ruling shall become final unless, within ten (10) calendar days of receipt of the notice of declaratory ruling, the petitioner files a written request for a reconsideration of the petition with the Secretary of the Board stating all grounds upon which the petitioner seeks reconsideration of the Board's ruling. A petition for rehearing, reopening, or reconsideration of an agency order issued pursuant to the provisions of this Section shall comply with the following procedures:

(1) A petition for rehearing, reopening or reconsideration of a final order must be filed with the Secretary of the Board within ten (10) days from the entry of the order. It must be signed by the party or his or her attorney, and must set forth with particularity the statutory grounds upon which it is based. However, a petition based upon fraud practiced by the prevailing party or upon procurement of the orders by perjured testimony or fictitious evidence may be filed at any time. All petitions for rehearing, reopening, or reconsideration will be considered and ruled upon as soon as the convenient conduct of the Board's business will permit.

(2) A petition for a rehearing, reopening, or reconsideration shall set forth the grounds for the request. The grounds for such a petition shall be either:

(A) Newly discovered or newly available evidence, relevant to the issues;

(B) Need for additional evidence adequately to develop the facts essential to proper decision;

(C) Probable error committed by the Agency in the proceeding or in its decision such as would be grounds for reversal on judicial review of the order;

(D) Need for further consideration of the issues and the evidence in the public interest; or

(E) A showing that issues not previously considered ought to be examined in order to properly dispose of the matter. The grounds justifying the rehearing shall be set forth by the Statewide Virtual Charter School Board which grants the order, or in the petition of the individual making the request for the hearing.

(3) It is the burden of the party requesting a rehearing to notify the opposing party of the appeal.

(4) Upon receipt of a written request for reconsideration in accordance with this subsection, the request shall be set on the agenda for consideration by the Statewide Virtual Charter at the next available regular meeting or at a subsequent regular or special meeting. Rehearing, reopening, or reconsideration of the matter may be heard by the State Board of Education or may be referred to a hearing officer. The hearing must be confined to those grounds on which the recourse was granted.

(u) **Judicial review.** Any person or party aggrieved or adversely affected by a final order in an individual proceeding is entitled to certain judicial review in accordance with the provisions of the Oklahoma Administrative Procedures Act, and the procedures set forth therein shall govern appeals.

[OAR Docket #15-567; filed 6-15-15]

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

[OAR Docket #15-568]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions [NEW]
777:10-1-2. Definitions [NEW]
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70 O.S. §§ 3-130 through 3-145.6; Statewide Virtual Charter School Board
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
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777:10-1-2. Definitions [NEW]
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31 Ok Reg 669
Docket number:
14-665
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The rule defines terms pertaining to statewide virtual charter facilities and face-to-face instruction, and also defines what constitutes a statewide virtual charter school subject to the regulations of Title 777.
CONTACT PERSON:
Rebecca Wilkinson, Executive Director, Statewide Virtual Charter School Board, Room 437, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Telephone number: (405) 522-0717

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 1. GENERAL PROVISIONS

777:10-1-2. Definitions

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

"Charter school site" or **"school site"** or **"statewide virtual charter school site"** means the physical location of any facility or structure, other than the legal residence of a student or the parent/legal guardian of a student, approved by the Statewide Virtual Charter School Board for use by a statewide virtual charter school to provide face-to-face or virtual instruction to students enrolled in the statewide virtual charter school.

"Face-to-face instruction" means any in-person tutoring, educational instruction, or any other activity provided by the statewide virtual charter school to an enrolled student for which the student's physical presence and/or participation is used by the charter school to earn credit for a virtual course, meet the instructional requirements of 70 O.S.§ 1-111 and/or counted toward the student's compulsory attendance requirements set forth at Art. 13, § 4 of the Oklahoma Constitution, 70 O.S. § 10-105, and/or accompanying regulations of the State Department of Education relating to student attendance.

"Statewide virtual charter school" means any charter school sponsored by the Statewide Virtual Charter School Board in accordance with the requirements of the Oklahoma Charter Schools Act for the purpose of providing full-time virtual public school courses of instruction for Pre-K through twelfth (12th) grade students whose legal residence is located within the State of Oklahoma.

[OAR Docket #15-568; filed 6-15-15]

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

[OAR Docket #15-569]

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Subchapter 3. Statewide Virtual Charter School Sponsorship
777:10-3-5. Full-time virtual charter schools - succession of contractual rights and reversion of property to Statewide Virtual Charter School Board [NEW]
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70 O.S. §§ 3-135; 3-136; 3-145.4; 3-145.5; Statewide Virtual Charter School Board
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31 Ok Reg 670
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14-666
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N/A
ANALYSIS:
The rule establishes procedures for reversion of charter school property to the Statewide Virtual Charter School Board in accordance with the requirements of 70 O.S. § 3-136(F).
CONTACT PERSON:
Rebecca Wilkinson, Executive Director, Statewide Virtual Charter School Board, Room 437, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Telephone number: (405) 522-0717

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 3. STATEWIDE VIRTUAL CHARTER SCHOOL SPONSORSHIP

777:10-3-5. Full-time virtual charter schools - succession of contractual rights and reversion of property to Statewide Virtual Charter School Board

(a) **Reversion of real and personal property to Statewide Virtual Charter School Board.** Pursuant to 70 O.S. § 3-136(F), upon the date of expiration or termination of a contract for sponsorship for a statewide virtual charter school, or in the event of a failure of a statewide virtual charter school to continue operations, all real and personal property acquired by the charter school shall be disposed of as set forth in the contract for sponsorship and in accordance with the following provisions:

(1) All unencumbered state aid, local, or federal funds, and all real property and personal property for which state, local or federal funds have been used all or in part to procure the property, shall be retained by the Statewide Virtual Charter School Board as the sponsor.

(2) All funds and property subject to the provisions of this subsection shall be deemed to revert to the Board as of the Termination Date. For purposes of this Section the Termination Date shall be either:

(A) The effective date of expiration or termination of the contract for sponsorship; or

(B) In the event a statewide virtual charter school fails to continue operation prior to expiration or termination of the contract, the date upon which the last day of courses were provided to students enrolled in the charter school.

(3) No later than ninety (90) calendar days prior to the date of expiration of the sponsorship contract, the statewide virtual charter school shall provide the Secretary of the Statewide Virtual Charter School Board with executed copies of all of the following documents:

(A) A detailed list of all real and/or personal property and other assets procured by the charter school during the term of the contract that includes identification of all sources of funds used to procure the property. All items procured all or in part with state, local or federal funds shall be clearly identified;

(B) Title documents, deeds, and/or leases for all real or personal property or other assets procured all or in part with state or federal funds;

(C) Copies of all executory contracts to which the charter school or its governing body is a party; and

(D) All documentation relating to debt, liabilities, encumbrances, or other obligations incurred by the charter school and/or the governing body of the charter school during the term of the sponsorship contract.

(4) The Statewide Virtual Charter School Board shall have forty-five (45) days after the date of delivery of all of the documents set forth in (3) of this subsection to request any additional documentation from the charter school the Board deems necessary to determine the assets and liabilities of the statewide virtual charter school.

(5) No later than forty-five (45) days after the Termination Date, the charter school shall complete and provide the Statewide Virtual Charter School Board with a final

audit of the charter school that complies with the annual audit requirements of the Oklahoma Public School Audit Law at 70 O.S. § 22-101 et seq and accompanying regulations.

(6) No later than sixty (60) calendar days after the Termination Date, the charter school shall deliver all records pertaining to operation of the charter school and its students to the Secretary of the Statewide Virtual Charter School Board or to the State Department of Education.

(7) All personal property of the charter school reverting to the Statewide Virtual Charter School Board in accordance with the provisions of 70 O.S. 3-136 and this Section shall be delivered to the Secretary of the Board no later than sixty (60) calendar days after the Termination Date in the manner and to the location(s) directed by the Board.

(8) The Chairman of the Statewide Virtual Charter School Board is authorized to execute conveyances and documents on behalf of the Board as necessary to fulfill the requirements of this subsection.

(b) **School district contracts for sponsorship of full-time virtual charter schools.** In accordance with the provisions of 70 O.S. 3-145.5, the following provisions shall apply to school district contracts for sponsorship of charter schools who provide full-time virtual education:

(1) **Contracts for sponsorship of a full-time virtual charter school.** Beginning July 1, 2014, no school district shall:

(A) Offer full-time virtual education to any student whose legal residence, as determined in accordance with the provisions of 70 O.S. § 1-113, is located outside of the boundaries of the school district; or

(B) Enter a contract to provide full-time virtual education to any student whose legal residence, as determined in accordance with the provisions of 70 O.S. § 1-113, is located outside of the boundaries of the school district.

(2) **Succession of contracts for school district sponsorship of a virtual charter school executed prior to January 1, 2014.** Beginning July 1, 2014, the Statewide Virtual Charter School Board shall succeed to the contractual sponsorship rights of any school district that executed a contract for sponsorship of a charter school prior to January 1, 2014. Contract succession shall be conducted in accordance with all of the following procedures:

(A) No later than July 1, 2014, the charter school shall provide the Secretary of the Statewide Virtual Charter School Board with all of the following documents:

(i) All of the documentation set forth in (a)(3) through (a)(4) of this Section; and

(ii) Copies of all reports, documents, and statements required by the Oklahoma Public School Audit Law, for all previous fiscal years of the charter school's operation; including, but not limited to, auditor's opinions and related financial statements of the charter school; and

(iii) Copies of the charter school's annual estimate of needs, and income and expenditure data required by 70 O.S. §§ 5-135 and 5-135.2 for all previous fiscal years of the charter school's operation.

(B) The terms of succession to the contract for sponsorship by the Statewide Virtual Charter School Board shall be as follows:

(i) The Statewide Virtual Charter School Board shall not succeed to any terms of a contract for sponsorship executed between a charter school and a school district that violates or conflicts with the Oklahoma Charter Schools Act and/or any state or federal laws and regulations applicable to charter schools, charter school sponsors, or the Statewide Virtual Charter School Board. In the event that any such statute or regulation goes into effect during the term of the contract, the conflicting contractual term shall be deemed superseded by law and deemed null and void.

(ii) Any debt, obligations, encumbrances, and/or liabilities incurred by the charter school in violation of the provisions of Art. 10 § 26 of the Oklahoma Constitution shall be deemed null and void, and shall not be assumed by the Statewide Virtual Charter School Board.

(iii) The Statewide Virtual Charter School Board may require the statewide virtual charter school to execute an addendum to the contract for sponsorship for the purpose of clarifying terms not otherwise addressed in the existing contract as necessary to comply with the Oklahoma Charter Schools Act or any other provision of state or federal law applicable to charter schools.

(C) The Statewide Virtual Charter School Board shall not distribute any state aid funds to a statewide virtual charter school pursuant to the provisions of this subsection until all of the following conditions have been met:

(i) All appropriate conveyances and other documents necessary to effect the transfer of any property associated with the contract have been finally executed by the parties and copies of the finally executed documents have been filed with the Secretary of the Statewide Virtual Charter School Board;

(ii) All property, equipment, supplies, records, and assets required to be transferred to the Statewide Virtual Charter School Board in accordance with the provisions of 70 O.S. § 3-145.5(B) has been delivered in the manner and to the location(s) directed by the Board;

(iii) The charter school is in compliance with all applicable state and federal regulations pertaining to charter schools; and

(iv) All other requirements of this paragraph have been met.

(D) The Statewide Virtual Charter School Board shall not distribute midyear allocation funds to a statewide virtual charter school that is a party to a contract for sponsorship assumed by the Statewide Virtual Charter School pursuant to the provisions of this subsection until:

(i) The statewide virtual charter school has conducted a final audit of the charter school for fiscal year 2014 that complies with the Oklahoma Public School Audit Law at 70 O.S. § 22-101 et seq and accompanying regulations;

(ii) Copies of the auditor's opinions, related financial statements, and any other documentation pertaining to the audit have been provided to the Statewide Virtual Charter School Board; and

(iii) The charter school has presented the audit at a meeting of the Statewide Virtual Charter School Board.

(E) Succession to the contractual rights and responsibilities of sponsorship by the Statewide Virtual Charter School Board shall not qualify the charter school to apply for funds from the Charter School Incentive Fund established pursuant to the provisions of 70 O.S. § 3-144, nor shall the first year of operation under the sponsorship of the Board be considered the charter school's first year of operation.

(F) The Chairman of the Statewide Virtual Charter School Board is authorized to execute conveyances and documents on behalf of the Board as necessary to fulfill the requirements of this subsection.

(c) **Termination or nonrenewal for good cause.** Failure by any charter school to comply with the provisions of this Section shall constitute good cause for:

(1) Termination or nonrenewal of a contract for sponsorship with the Statewide Virtual Charter School Board; and/or

(2) Denial of any application for sponsorship subsequently submitted by the charter school and/or authorized representatives of the charter school, including, but not limited to, the governing body of a charter school.

[OAR Docket #15-569; filed 6-15-15]

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

[OAR Docket #15-570]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Statewide Virtual Charter School Facilities [NEW]
777:10-5-3. Statewide virtual charter school sites [NEW]
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70 O.S. §§ 3-130 through 3-145.6; Statewide Virtual Charter School Board
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777:10-5-3. Statewide virtual charter school sites [NEW]
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31 Ok Reg 672
Docket number:
14-667
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The rule requires that any facilities used by a statewide virtual charter school to provide face-to-face instruction to enrolled students must comply with all applicable statutes and regulations governing health and safety of public school facilities, and that the facilities be approved in advance by the Statewide Virtual Charter School Board for use by the virtual charter school. It also establishes limits on the amount of face-to-face instruction a full-time virtual provider may offer a student enrolled as a full-time virtual student of the school, and requires the submission of an approved transportation plan as a prerequisite for any statewide virtual charter school to make a claim for transportation supplement funding.
CONTACT PERSON:
Rebecca Wilkinson, Executive Director, Statewide Virtual Charter School Board, Room 437, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Telephone number: (405) 522-0717

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 5. STATEWIDE VIRTUAL CHARTER SCHOOL FACILITIES

777:10-5-3. Statewide virtual charter school sites

(a) **Face-to-face instruction.** No statewide virtual charter school or employee of the statewide virtual charter school shall provide face-to-face instruction to any charter school student unless:

(1) The instruction occurs at either:

(A) The legal residence of a student or the parent/legal guardian of a student; or

(B) A facility approved as a charter school site of the statewide virtual charter school in which the student is enrolled; and

(2) The instruction is limited to no more than nine (9) hours per week of instruction per student.

(b) **Approval of statewide virtual charter school sites.** The Board may approve a charter school site if the following conditions have been met:

(1) The statewide virtual charter school submits an application at least sixty (60) days prior to beginning face-to-face instruction at the facility;

(2) The facility complies with all federal and state statutes and regulations governing safety that are applicable to public school facilities; and

(3) The facility has been approved by the State Department of Education Office of Accreditation.

(c) **Reporting of approved statewide virtual charter school sites.** No later than July 1 prior to each school year, each statewide virtual charter school shall provide the State Department of Education with a list of all approved statewide virtual charter school sites. A statewide virtual charter school shall not be eligible to obtain funding for instruction provided at any statewide virtual charter school site not approved and reported in accordance with the provisions of this Section and all other applicable statutes and regulations pertaining to charter school facilities.

(d) **Transportation supplement funding.** A statewide virtual charter school shall not be eligible to receive transportation supplement funding for transportation to a statewide virtual charter school site in accordance with the provisions of 70 O.S. § 3-141 for any school year without a written transportation plan approved by the Statewide Virtual Charter School Board. The statewide virtual charter school shall submit its approved transportation plan to the State Department of Education Office of State Aid no later than July 1 prior to the school year for which the transportation plan has been approved.

[OAR Docket #15-570; filed 6-15-15]

TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION
CHAPTER 10. SPORT FISHING RULES

[OAR Docket #15-417]

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PERMANENT final Adoption
RULES:
Subchapter 1. Harvest and Possession Limits
800:10-1-3. Additional definitions [AMENDED]
800:10-1-4. Size limits on fish [AMENDED]
800:10-1-5. Bag limits on fish [AMENDED]
800:10-1-7. Possession limit [AMENDED]
Subchapter 3. Methods of Taking
800:10-3-3. Additional definitions [AMENDED]
800:10-3-5. Use of bow and arrow, grabhooks, gigs, spears, and spearguns, snagging, noodling and netting [AMENDED]
Subchapter 5. Area Restrictions and Special Fees
800:10-5-1.1. Definitions [AMENDED]
800:10-5-2. Department fishing areas [AMENDED]
800:10-5-3. Designated trout areas [AMENDED]
800:10-5-5. Tailwaters [AMENDED]
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Title 29 O.S., Section 3-103, 5-401, 6-302; Article XXVI, Section 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.
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Approved by Governor's declaration on June 8, 2015
FINAL ADOPTION:
June 8, 2015.
EFFECTIVE:
September 1, 2015
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 5. Area Restriction and Special Fees
800:10-5-3. Designed trout areas [AMENDED]
Gubernatorial approval:
August 25, 2014
Register publication:
32 Ok Reg 53
Docket number:
14-862
Superseded rules:
Subchapter 1. Harvest and Possession Limits
800:10-1-3. Additional Definition [AMENDED]
800:10-1-4. Size limit on fish [AMENDED]
800:10-1-5. Bag limits on fish [AMENDED]
Subchapter 3. Methods of Taking
800:10-3-5. Use of bow and arrow, grabhooks, gigs, spears, and spearguns, snagging, noodling and netting [AMENDED]
Subchapter 5. Area Restrictions and Special Fees
800:10-5-2. Department fishing areas [AMENDED]
Gubernatorial approval:
November, 3, 2014
Register publication:
32 Ok Reg 263
Docket number:
14-961
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
These rule changes will decrease the walleye, saugeye and sauger length limit to 14 inches statewide with certain exceptions, add fishing regulations for Doc Hollis and American Horse lakes, standardize the catfish bag limit for all methods of harvest, reduce the flathead catfish limit from ten to five, restrict tiger muskie harvest at Lake Carl Etling, prohibit the possession of filleted fish while fishing, simplify bowfishing rules, define "fish remains", prohibit noodling and snagging in the Wister Lake tailwater, define the Wister Lake tailwater, define tackle approved for use in portions of the Lower Mountain Fork trout stream, restrict boats and motors on Doc Hollis lake, allow hunting on Doc Hollis Lake, remove Lake Pawhuska from the list of Designated Trout Areas and add Perry CCC Lake, and require anglers to keep fish separate with name and license number when fishing in tailwaters.
CONTACT PERSON:
Barry Bolton, Chief of Fisheries Division, Oklahoma Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, OK 73105. Phone: 405/521-3721 or Rhonda Hurst, APA Liaison, phone: 405/522-6279.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2015:

SUBCHAPTER 1. HARVEST AND POSSESSION LIMITS

800:10-1-3. Additional definitions

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

"Department fishing areas" means lakes American Horse, Burtschi, Chambers, Dahlgren, Doc Hollis, Elmer, Etling, Fugate, Hall, Jap Beaver, Nanih Waiya, Ozzie Cobb, Raymond Gary, Schooler, Vanderwork, Vincent, Watonga, the Blue River Public Fishing and Hunting Area and the Lower Illinois River Public Fishing and Hunting Area - Simp and Helen Watts Management Unit.

"No culling" means fish caught and placed on a stringer or otherwise held in possession (live well, basket, ice chest, etc.) cannot be released.

"Total length" means measured from the tip of the snout to the end of the tail, with the fish laid flat on the rule with mouth closed and tail lobes pressed together.

"Close To Home" fishing waters means bodies of water designated as such under a cooperative fisheries management agreement between ODWC and participating cities and/or municipalities. "Close to Home" fishing waters shall be designated in the Oklahoma Department of Wildlife Conservation Oklahoma Fishing Guide which is published annually.

800:10-1-4. Size limits on fish

There are no length and/or size limit restrictions on any game or nongame fish, except as follows:

(1) All largemouth and smallmouth bass less than fourteen (14) inches in total length must be returned to the water unharmed immediately after being taken from public waters unless regulated by specific municipal ordinance or specified in regulations listed below: Lakes and Reservoirs with no length limit on largemouth and smallmouth bass - Lake Murray, all waters in the Wichita National Wildlife Refuge.~~and American Horse Lake.~~

(2) All largemou th and smallmouth bass between thirteen (13) and sixteen (16) inches in total length must be returned unharmed immediately after being taken from lakes Chimney Rock (W.R. Holway), Arbuckle, Okmulgee and Tenkiller Lake (downstream from Horseshoe Bend boat ramp).

(3) All crappie (Pomoxis sp.) less than 10 inches in total length must be returned to the water unharmed immediately after being taken from Lakes Arbuckle, Tenkiller, Hudson, Texoma, Ft. Gibson, including all tributaries and upstream to Markham Ferry Dam and Grand Lake, including all tributaries to state line.

(4) All walleye, sauger, and saugeye (sauger x walleye hybrid) less than ~~18~~14 inches in total length must be returned to the water unharmed immediately after being taken statewide, except at ~~Altus Lugert, Ellsworth, Foss, Fort Cobb, Lawtonka, Tom Steed, Waurika and Murray lakes and the respective tailwaters, where walleye, sauger and saugeye less than 14 inches in total length must be returned to the water unharmed immediately and at~~ Great Salt Plains Reservoir and tailwater where the size limit does not apply,~~and in the Illinois River below Tenkiller Dam and~~ the Arkansas River from Keystone Dam downstream to the Oklahoma state line including all major tributaries upstream to impoundment and R.S. Kerr, Webbers Falls, W.D. Mayo reservoirs as legally defined in Title 800 where all walleye, sauger and saugeye less than 16 inches must be returned to the water unharmed immediately, and at Atoka Bluestem, Bluestem, Carl Blackwell, Healdton, Ponca City, Shell, Sooner, and Thunderbird Reservoirs and the respective tailwaters where all walleye, sauger, and saugeye less than 18 inches total length must be returned to the water unharmed immediately.

(5) All largemouth and smallmouth bass between sixteen (16) and twenty-two (22) inches in total length must be returned to the water immediately after being taken from McGee Creek Lake, Dripping Springs Lake and Crowder Lake (Washita County).

(6) All rainbow trout less than twenty (20) inches in total length must be returned to the water immediately after being taken from the lower Mountain Fork River trout stream from the Lost Creek water control structure downstream to the first Highway 259 Scenic bridge, including Evening Hole and the Lost Creek stream channel, and from the State Park Dam downstream to the mouth of Rough Branch Creek and in the lower Illinois River trout stream from the USGS stream gauge downstream to the gravel pit county road. All brown trout less than twenty (20) inches in total length must be returned to the water immediately after being taken from the lower Mountain Fork River from Broken Bow Dam downstream to the U. S. Highway 70 bridge, and from the lower Illinois River trout stream from Tenkiller Dam downstream to the U. S. Highway 64 bridge.

(7) All blue catfish and channel catfish less than twelve (12) inches in total length must be returned to the water unharmed immediately after being taken from Texoma Lake.

(8) All smallmouth bass less than fourteen (14) inches in total length must be returned to the water unharmed immediately after being taken from all rivers and streams including the Illinois River upstream from the Horseshoe Bend boat ramp, and from the Glover River from the confluence with the Little River upstream to the 'Forks of the Glover River'. Possession of smallmouth bass less than fourteen (14) inches in total length on all streams and rivers is prohibited.

(9) All black bass (largemouth, spotted and smallmouth) less than fourteen (14) inches in total length must be returned unharmed immediately after being taken from the Blue River Public Fishing Area.

(10) All striped bass less than twenty (20) inches must be returned unharmed immediately after being taken from Sooner Reservoir.

800:10-1-5. Bag limits on fish

No person shall, during any one day, take, attempt to take, kill, or harvest more than:

(1) Six (6) largemouth or smallmouth bass or six in aggregate, except in "Close To Home" fishing water, Doc Hollis Lake and at American Horse Lake where all largemouth bass caught must be returned to the water unharmed immediately after being taken (no harvest allowed), at Texoma Reservoir where the limit is five (5), largemouth, smallmouth or spotted bass or five in aggregate, at Lake Konawa, McGee Creek Lake, Dripping Springs Lake and Crowder Lake (Washita County) where the limit is six (6) of which only one (1) may be twenty-two (22) inches or longer and rivers and streams including the Illinois River upstream from the Horseshoe Bend boat ramp, and from Glover River from the confluence with the Little River upstream to the "Forks of the Glover River" where the limit is six (6) black bass aggregate of which only one may be a smallmouth bass, which must be fourteen (14) inches or longer.

(2) Fifteen (15) channel and/or blue catfish, or fifteen (15) in aggregate, of which only one (1) blue catfish may be 30 inches in length or larger; except at all U.S. Forest Service and State Park lakes (not including Lake Murray) and Department of Wildlife Management Area ponds and all Department of Wildlife Conservation fishing areas, in "Close To Home" fishing waters and all waters within the Wichita Mountains National Wildlife Refuge, where the limit is six (6). Five (5) flathead catfish. ~~Ten (10) flathead catfish, except in Lake Texoma where the daily limit is five (5). For noodlers and scuba divers the daily limit is three (3) blue, channel, or flathead catfish or three in aggregate of which only one can be 30 inches or longer from May 1 through August 31, annually.~~

(3) Thirty-seven (37) crappie (Pomoxis sp.) except at Blue River Public Fishing and Hunting Area where the limit is six (6) and at lakes Arbuckle, Tenkiller, Hudson, Ft. Gibson including all tributaries and upstream to Markham Ferry Dam and Grand Lake including all tributaries to state line where the limit is fifteen (15).

(4) Six (6) rainbow trout - possession limit of twelve (12) after first day, except in the lower Mountain Fork River trout stream from the Lost Creek water control structure downstream to the first Highway 259 Scenic bridge, including Evening Hole and the Lost Creek stream channel, and from the State Park Dam downstream to the mouth of Rough Branch Creek, and in the lower Illinois River trout stream from the USGS stream gauge downstream to the gravel pit county road where the limit is one (1) rainbow trout per day twenty (20) inches or longer in total length (no culling); and in the Blue River from its entry onto the Plaster Wildlife Management Unit/Landrum Wilderness downstream approximately $\frac{1}{2}$ mile to a marker cable where all trout caught must be released immediately from November 1 to March 1 (thereafter, statewide trout bag limit applies).

(5) Six (6) brown trout, except in the lower Mountain Fork River trout stream below Broken Bow dam downstream to the U. S. Highway 70 bridge, and in the lower Illinois River trout stream from Tenkiller Dam downstream to US Highway 64 bridge where the limit is one (1) fish per day twenty (20) inches or longer in total length.

(6) Six (6) walleye, sauger and/or saugeye, or six (6) in aggregate.

(7) Five (5) striped bass except as designated in 800:10-1-5(8).

(8) Ten (10) striped bass and/or striped bass hybrids or ten (10) in aggregate of which only two (2) may be twenty (20) inches or longer in Texoma Reservoir.

(9) Twenty (20) striped bass of which only five (5) may be twenty (20) inches or longer, except as designated in 800:10-1-5(8) and (10).

(10) Five (5) striped bass and/or striped bass hybrids, in aggregate, of which only two (2) may be 20 inches or longer in Arcadia Lake and Skiatook Lake.

(11) Twenty-five (25) white bass in Lake Texoma.

(12) One (1) paddlefish (Polyodon spathula) per day on Sunday, Tuesday, Wednesday, Thursday, and Saturday, statewide. Catch and release of paddlefish only (no harvest) is permitted on Monday and Friday, statewide. Possession of paddlefish in the field is prohibited on Monday and Friday, statewide. The catch and release of paddlefish is permitted by use of rod and reel, trotline and throwlines. Paddlefish must be released immediately unless kept for the daily limit. Paddlefish taken by bow and arrow, gigs, spears or spearguns shall not be released.

(A) Individual annual harvest limit- An individual harvest limit for paddlefish may be set or amended annually by the Wildlife Conservation Commission and will be listed in the Oklahoma Department of Wildlife Conservation Fishing Guide. Special area (or management unit) paddlefish harvest caps, a general statewide paddlefish harvest cap, and the total number of paddlefish permits issued may be set or amended annually by the Wildlife Conservation Commission for use in determining the individual annual harvest limit. Once an individual angler has reached their annual harvest limit, continued catch and release is permitted.

(B) Paddlefish permit- It shall be unlawful for any person, regardless of residency, age or disability, to fish for paddlefish or be in possession of paddlefish parts without having first secured from the Department of Wildlife Conservation, an annual paddlefish permit. Immediately upon taking possession of a paddlefish with the intent of harvesting said fish, the angler must record the date and time of harvest on the paddlefish permit in the harvest record area provided. This permit must be carried on their person while fishing and/or in possession of paddlefish or parts and be produced for inspection upon the demand of any Oklahoma citizen or game warden. This permit shall be valid for paddlefish catch and release fishing in all

waters of the state and at any time unless otherwise prohibited.

(C) Harvest Tagging- Paddlefish caught and placed on a stringer or otherwise held in possession must be plainly labeled (tagged) immediately with the angler's paddlefish permit number. Paddlefish taken into possession cannot be released (no culling). Each person must keep their own paddlefish distinctly separate from paddlefish taken by other anglers. Each cleaned paddlefish, or its meat, eggs, or carcass, must be kept separate from all other cleaned paddlefish or its parts. Paddlefish or their parts must remain tagged until the person in possession of the paddlefish or paddlefish parts has reached their residence. All paddlefish must have all viscera (internal organs) removed from the paddlefish before leaving the state. Persons fishing trotlines or throwlines must release all paddlefish on their lines, except the one (1) paddlefish held in possession for their daily limit, before leaving the trotline or throwline. Anglers must cease snagging for the day when they have taken their daily limit of paddlefish into possession.

(D) Reporting- Harvest of paddlefish must be reported by the harvesting angler to Oklahoma Department of Wildlife within 24 hours of harvest. Instructions for reporting harvest will be provided in the Oklahoma Department of Wildlife Fishing Guide and on the Oklahoma Department of Wildlife website.

(13) Release of striped bass and/or striped bass hybrids caught and placed on a stringer, in a live well or otherwise held in possession is prohibited statewide (no culling).

(14) One (1) alligator gar (Atractosteus spatula) per day, statewide, except during the period of May 1 through May 31 when angling for alligator gar by all angling methods is prohibited on Lake Texoma between the Highway 99 bridge upstream to the I-35 bridge. The catch and release of alligator gar is permitted year round, except during the closure referenced above, by use of rod and reel, trotline and throwlines. Alligator gar must be released immediately unless kept for the daily limit. Persons fishing trotlines or throwlines must release all alligator gar on their lines except the one alligator gar held in possession for their daily limit, before leaving the trotline or throwline. Alligator gar taken by bow and arrow, gigs, spears or spearguns shall not be released. Alligator gar caught and placed on a stringer or otherwise held in possession cannot be released (no culling). Anglers must cease snagging when they have taken their daily limit of alligator gar into possession.

(15) One (1) of any fish species classified as those of Special Concern Category I or Category II (as identified in 800:25-19-6). Such harvest must be reported to ODWC.

(16) All tiger muskie (Esox masquinongy x Esox lucius) caught must be returned to the water unharmed immediately after being taken (no harvest allowed).

(~~16~~17) Other fish do not have bag or possession limits. Notwithstanding the foregoing fish bag limits, any bag limits for fish can be superseded and set by Commission resolution as authorized by Section 6-302(B) of Title 29 of the Oklahoma Statutes.

800:10-1-7. Possession limit

(a) No resident or nonresident shall have in their possession, in the field, more than one (1) daily bag limit listed in 800:10-1-5 and 800:10-1-6. Nonresidents shall not have more than two (2) daily bag limits in their possession at any time other than in the field, except for paddlefish which shall not exceed the individual annual harvest limit as listed in the Oklahoma Department of Wildlife Conservation Fishing Guide. "In the Field" means while fishing, or while in a boat, or on the bank or in the immediate vicinity of any river, creek, stream, lake or pond, or while transporting or carrying the fish from the waters described above to camp or from such waters to the final destination.

(b) No person may possess with intent to transport or transport via land based transportation more than 200 shad, for personal use as bait. The sale, offer for sale, transport from Oklahoma with intent to sell or offer to sell shad taken from waters of this state is prohibited.

(c) No person shall transport shad from waters infested with Bighead or Silver Carp. These waters shall be designated in the Oklahoma Department of Wildlife Conservation Oklahoma Fishing Guide which is published annually. If shad are collected from these listed waters for use as bait, they may only be used in the water body from which they were collected.

(d) Fish cleaning - You may not possess a gamefish, hybrid striped bass or flathead catfish that has been filleted or had its head or tail removed while actively engaging in fishing.

SUBCHAPTER 3. METHODS OF TAKING

800:10-3-3. Additional definitions

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

"Bow and arrow" when used for bowfishing means any bow and arrow (including crossbows) ~~having no more than one (1) point with no more than four (4) barbs. Devices~~ and devices that permit a bow to be held mechanically at full or partial draw are permitted.

"Foul hooked" means a fish hooked other than inside the mouth.

"Gaff hook" means a handheld hook or handheld pole with a hook attached and may only be used in the landing of a fish, other than paddlefish, already hooked by other legal hook and line methods.

"Gig" means a hand-held fish spearing device mounted at the end of a shaft containing not more than three (3) points and not more than two (2) barbs on each point.

"Grabhook" means a handheld hook or handheld pole, or rope, with a single hook attached used in the initial taking of a fish.

"Jugline" means a vertical line suspended from a non-metallic or nonglass floating device which is drifting free or anchored, having no more than five (5) hooks per line and limited to twenty (20) such juglines per person.

"Limbline" means a line attached to a limb, branch, other natural object, or non-metallic manmade pole having no more than two (2) hooks attached per line and limited to twenty (20) such limblines per person.

"Noodling" means the taking of fish by use of hands only.

"Snagging" means the dragging of one (1) single hook or one (1) treble hook through the water attached to a hand-held line or fishing rod and line for the purpose of impaling fish. Only one (1) pole or rod per angler is permitted while snagging.

"Yo-Yo" means any mechanical fishing device which automatically recoils when a fish strikes and is limited to no more than twenty (20) such devices per person.

"Unattended" means not within visual observing distance.

"Fish Remains" means any fish that has been filleted or has had the entrails removed.

800:10-3-5. Use of bow and arrow, grabhooks, gigs, spears, and spearguns, snagging, noodling and netting

(a) **Bow and arrow.** The use of bow and arrows in bowfishing shall be lawful for taking nongame fish only in all waters of the state throughout the year, except:

(1) Illinois River and its tributaries shall be closed at all times to such fishing except, those portions above the Horseshoe Bend boat ramp on Tenkiller Reservoir which is open from December 1 through March 31 annually. Tenkiller Reservoir below Horseshoe Bend boat ramp is open to bowfishing.

(2) Reservoir tailwaters, other than Eufaula, Keystone, Wister, Fort Gibson, Thunderbird and Hudson (Markham Ferry) shall be closed to fishing with bow and arrows throughout the year. This does not alter provisions of 29 O.S., Section 7-101, which designates a safety zone of the first 150 feet immediately below the dam on all reservoirs except Tenkiller, Canton, Salt Plains, and Fort Supply.

(3) All waters defined as "Designated Trout Areas" during open season for taking trout are closed.

(4) All waters within the boundaries of the Wichita Mountains Wildlife Refuge are closed.

(5) Only that section of the Caney River from Hulah Dam downstream approximately 1,200 feet to the re-regulation dam is closed. Fishing with a bow and arrow is lawful in the Caney River below the re-regulation dam.

(6) The following portions of Grand River:

(A) The main river channel of Grand River below the turbine outlets of Grand River Dam downstream to the State Park Bridge is closed throughout the year.

(B) The Grand River occurring below the spillway outlets of Grand River Dam downstream to the highline crossing (approximately $\frac{1}{2}$ mile) is closed throughout the year with the next $\frac{1}{2}$ mile downstream from the highline crossing closed during periods when the spillway gates are open and discharging water and for seven (7) days following closure of the spillway gates.

(7) The Little River tributary of Thunderbird Reservoir above Franklin Road in Cleveland County is closed.

(8) "Close To Home" fishing waters and Lakes Pickens, Carl Albert and Taft and all ponds and lakes in the Ouachita National Forest are closed.

(9) The taking of paddlefish by bow and arrow is prohibited on the Red River from Denison Dam downstream to the stateline year round.

(10) Bowfishing may be used at Lakes Hefner, Overholser (including tailwaters and downstream to NW 10th St. bridge) and Draper throughout the year during daylight hours only.

(11) The Salt Fork of the Arkansas River from the spillway of Great Salt Plains Reservoir downstream to the State Highway 38 Bridge is closed.

(12) Bowfishing for tiger muskie at Lake Carl Etling is prohibited.

(b) **Grabhooks.** Taking fish by use of a grabhook is prohibited in all state waters.

(c) **Gigs, spears and spearguns.** The use of gigs, spears and spearguns containing not more than three (3) points with no more than two (2) barbs on each point shall be lawful for taking nongame fish only, except white bass may be taken by use of a gig. These methods are lawful in all:

(1) Rivers and streams from December 1 through March 31, except:

(A) The taking of paddlefish by use of gig, spear or speargun is prohibited from May 16 through March 14 of the following year, statewide.

(B) The Poteau and Fourche Maline Rivers and all their tributaries within LeFlore County are closed throughout the year.

(C) All waters designated as "Designated Trout Areas" during the open season for taking trout are closed.

(D) The Canadian River from Eufaula Dam downstream for a distance of one (1) mile to be so designated by buoy or other appropriate marker is closed throughout the year.

(E) The Caney River from Hulah Dam downstream to the confluence of the old and new river channels is closed.

(F) The following portions of Grand River:

(i) The main river channel of the Grand River below the turbine outlets of Grand River Dam downstream to State Park Bridge is closed throughout the year.

(ii) The Grand River occurring below the spillway outlets of Grand River Dam downstream for a distance of one (1) mile is closed throughout the year.

(G) Rivers and streams in Delaware and Mayes counties are open to the use of gigs throughout the year, unless specifically closed in other sections of this chapter.

(H) The Little River tributary of Thunderbird Reservoir above Franklin Road in Cleveland County is closed.

(2) Lakes and reservoirs throughout the year, except:

(A) Waters within the boundaries of the Wichita Mountains Wildlife Refuge other than that portion of Lake Elmer Thomas are closed.

(B) Tenkiller Reservoir, below the Horseshoe Bend boat ramp, is closed throughout the year except by speargunning when used with a self-contained underwater breathing apparatus which is closed from June 15 through July 15 annually to the taking of flathead catfish only.

(C) All Department Fishing Areas, all "Close To Home" fishing waters and Lakes Carl Albert, Sooner, Lone Chimney and Taft and all ponds and lakes in the Ouachita National Forest are closed. Konawa is closed to gigging.

(D) Lakes Hefner, Overholser (including tailwaters and downstream to NW 10th St. bridge) and Draper are closed.

(3) Reservoir tailwaters other than Hudson (Markham Ferry) shall be closed to fishing with gigs, spears and spearguns throughout the year. This does not alter provisions of 29 O.S., Section 7-101, which designates a safety zone of the first 150 feet immediately below the dam on all reservoirs except Tenkiller, Canton, Salt Plains, and Fort Supply.

(d) **Snagging.** Snagging for nongame fish only shall be lawful in all waters of the State throughout the year, except:

(1) Reservoir tailwaters other than Fort Gibson which is open 24 hours a day~~, and Wister which is open from 10 p.m. to 6 a.m.;~~ shall be closed to fishing by snagging throughout the year. This does not alter provisions of 29 O.S., Section 7-101, which designates a safety zone of the first 150 feet immediately below the dam on all reservoirs except Tenkiller, Canton, Salt Plains, and Fort Supply.

(2) Wister tailwater is closed to snagging from below the dam down to the power-line at the confluence of the old and new river channels.

(~~2~~3) The following rivers, lakes, and streams:

(A) The Illinois River and its tributaries above the Horseshoe Bend boat ramp on Tenkiller Reservoir and below the dam shall be closed at all times to such fishing.

(B) All waters designated as "Designated Trout Areas" during the open season for taking trout are closed.

(C) All waters within the boundaries of the Wichita Mountains Wildlife Refuge are closed.

(D) The Canadian River from Eufaula Dam tailwater ~~Downstream~~downstream for a distance of one (1) mile to be so designated by buoy or other appropriate marker is closed throughout the year.

(E) The Caney River from the Hulah Dam downstream to the confluence of the old and new river channels is closed.

(F) The following portions of the Grand River:

(i) The main river channel of Grand River below the turbine outlets of Grand River Dam downstream to the State Park Bridge is closed throughout the year.

(ii) That portion of the Grand River occurring below the spillway outlets of Grand River Dam downstream to the highline crossing (a distance of approximately $\frac{1}{2}$ mile) is closed throughout the year with the next $\frac{1}{2}$ mile downstream from the highline crossing closed during periods when the spillway gates are closed.

(iii) That portion of the Grand River occurring from the Markham Ferry Dam (Lake Hudson Dam) downstream to the Highway 412 bridge from 10 p.m. to 6 a.m. year-round.

(G) The Arkansas River from the tailwaters below Keystone Dam downstream to the Interstate 44 (Skelly Drive) Bridge at Tulsa shall be closed at all times to such fishing.

(H) The Little River tributary of Thunderbird Reservoir above Franklin Road in Cleveland County is closed.

(I) All Department Fishing Areas, all "Close To Home" fishing waters and Lakes Pickens, Carl Albert, Sooner and Konawa and all ponds and lakes in the Ouachita National Forest are closed.

(J) Lakes Hefner, Overholser (including tailwaters and downstream to NW 10th St. bridge) and Draper are closed.

(~~3~~4) When snagging for paddlefish the hook must have the barbs removed or completely closed. Only one (1) rod and reel is permitted per angler when snagging.

(e) **Noodling.** Possession of hooks, gaffs, spears, poles with hooks attached and/or ropes with hooks attached while in the act of noodling, shall be proof of violation of the "hands only" noodling law. Noodling shall be lawful for nongame fish and blue, channel, and flathead catfish; only during daylight hours throughout the year.

(1) Rivers and streams of the state, except:

(A) The Illinois River and its tributaries above Horseshoe Bend boat ramp on Tenkiller Reservoir and below the dam shall be closed at all times to such fishing.

(B) All waters designated as "Designated Trout Areas" during the open season for taking trout are closed.

(C) Kiamichi River from Hugo Dam downstream to the first railroad bridge is closed.

(D) The following portions of the Grand River:

(i) The main river channel of Grand River below the turbine outlets of Grand River Dam downstream to the State Park Bridge is closed throughout the year.

(ii) The Grand River occurring below the spillway outlets of Grand River Dam downstream to the highline crossing is closed throughout the year except the day of and two (2) days following closure of the spillway gates when noodling will be legal.

(E) The Little River tributary of Thunderbird Reservoir above Franklin Road in Cleveland County is closed.

(F) Wister tailwaters is closed to noodling from below the dam down to the power-line at the confluence of the old and new river channels.

(2) Corps of Engineers and Bureau of Reclamation Reservoirs, Grand and Hudson Lakes.

(3) All waters within the boundaries of the Wichita Mountains Wildlife Refuge are closed.

(4) All Department Fishing Areas, all "Close To Home" fishing waters (except noodling is allowed in the North Canadian River from the NW 10th St. bridge downstream to the MacArthur St. bridge in Oklahoma City) and Lakes Pickens, Carl Albert, Taft, and Lone Chimney, Ponca and Carl Blackwell and all ponds and lakes in the Ouachita National Forest are closed.

(5) Lakes Hefner, Overholser (including tailwaters and downsteam to NW 10th St. bridge) and Draper are closed.

(f) **Netting (noncommercial).** Netting (noncommercial) is closed statewide.

(g) **Collecting Bait for personal use.** Cast netting, trawl netting, dip netting, minnow traps and seining non-game fish commonly used for bait for personal use is lawful in all waters of this state unless specifically closed under 800:10-5-2, 800:10-5-3 and/or 800:10-5-6. Cast nets and dip nets shall have a mesh size no greater than three-eights (3/8) inch square mesh. Seines shall not exceed twenty (20) feet in length, and the mesh shall be no larger than one-half ($\frac{1}{2}$) inch square unless seining for minnows then the mesh shall not exceed one-fourth (1/4) inch. Minnow traps shall have a mesh size no greater than one-half ($\frac{1}{2}$) inch, shall not be longer than three (3) feet, shall not exceed eighteen (18) inches in diameter on round traps or eighteen (18) inches on a side on square or rectangular traps. The trap entrance (throat) cannot exceed two (2) inches across the opening. No person shall fish with more than 3 minnow traps. All minnow traps must have the owner's name and address attached and the traps must be attended once every 24 hours. All game fish and non-game fish not commonly used for bait must be released immediately. Minnow traps cannot be made with glass.

SUBCHAPTER 5. AREA RESTRICTIONS AND SPECIAL FEES

800:10-5-1.1. Definitions

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

~~(1) **"artificial flies and lures"** means artificial flies or lures constructed of any material excluding those containing, constructed with or used in conjunction with:~~

~~(A) Soft plastic fish eggs, worms, grubs and larvae.~~

~~(B) Any natural fish food such as bait fish, fish parts, crayfish, frogs, grubs, insects, larvae, worms and fish eggs.~~

~~(C) Any human food substances such as cheese, corn and garlic.~~

~~(D) Any dough bait, putty or paste type bait.~~

~~(E) Any substance, either chemical or natural, designed to attract fish by taste or smell regardless if the substance is added in the manufacturing process or applied afterward.~~

(~~2~~1) **"barbless hooks"** means any hook manufactured without a barb for the purpose of keeping a fish attached to the hook or hooks having manufactured barbs that have been removed or pinched down in a manner that renders the barb ineffective in holding a fish to the hook.

(~~3~~2) **"glass beverage containers"** means any container made partially or entirely of a glass product for the purpose of containing a consumptive beverage.

800:10-5-2. Department fishing areas

The following rules and restrictions govern public use on all Department Fishing Areas, including:

(1) **Department owned lakes and access areas.** The following rules apply:

(A) Camping is permitted, but limited to three (3) days duration at all areas, except at the Kiamichi River Access Area and the Lower Illinois River Public Fishing and Hunting Area - Simp and Helen Watts Management Unit where no overnight camping is permitted and at Lakes Watonga, Carl Etling and the Illinois River Access Areas where camping shall be limited to fourteen (14) consecutive days. Camping is permitted only in designated camping areas.

(B) Boats and motors are permitted except at Doc Hollis Lake. All boats and motors must comply with existing state boat regulations and boat operators must obey Oklahoma State Boat Laws. All boats must be operated at no-wake speed (six '6' miles per hour or less) and may not be left on the water or the areas longer than the limit on camping.

(C) Water skiing is prohibited.

(D) Disposal of trash, refuse and debris is prohibited, except in designated trash containers. This includes organic and inorganic materials.

(E) Glass beverage containers are prohibited at Department fishing areas except in designated camping and parking areas.

(F) Commercial concessions and private developments on Department property are prohibited. Soliciting, advertising or promoting any commercial or private activity is prohibited. The use of these areas for any commercial operation in any way is prohibited.

(G) Dogs must be kept on a leash at all times, except when used to hunt with, during legal open hunting seasons on those areas where hunting is permitted.

(H) Boat houses, ramps, docks and other facilities may not be constructed on Department property without specific approval of the Oklahoma Wildlife Conservation Commission.

(I) It shall be unlawful to drive, occupy or park any motor driven vehicle, including automobiles, trucks, mini bikes, motorcycles, etc., except on maintained roads, (unless posted as "no parking zones"), designated parking areas, and designated camping areas. It shall be unlawful to operate any vehicle in a manner to create a public nuisance or to park in a "no parking zone." Operators must be licensed drivers.

(J) Cutting or defacing of trees and vegetation shall be prohibited. Removal of any vegetation, soil, rocks, water or minerals is prohibited except under written approval of the Department Director.

(K) Vandalism, theft, and damage to State property ~~is~~are prohibited.

(L) No person shall use threatening, abusive, or indecent language, participate in a disorder assemblage, nor publicly appear nude or intoxicated on any lands owned or managed by the Oklahoma Department of Wildlife Conservation.

(M) After 10:00 p.m., and until 5:00 a.m., all Department fishing areas will be restricted to fishing and fishing related activities only, and hunting if permitted by Commission.

(N) Swimming is not permitted unless a designated swimming area is established by the Wildlife Conservation Commission.

(O) Hunting is permitted on the following lakes: Hall, Jap Beaver, Burtschi, Nanih Waiya, Ozzie Cobb, Schooler, Evans-Chambers, American Horse and Vanderwork during the period of September 1 through Spring Turkey Season, including migratory bird seasons. Hunting regulations and restrictions for lakes Dahlgren, and Doc Hollis, and Vincent are the same as those listed for Lexington WMA (Dahlgren), Sandy Sanders WMA (Doc Hollis), and Ellis County WMA (Vincent). The following lakes are closed to hunting or taking of wildlife by any means: Elmer, Etling, Raymond Gary and Watonga. Hunting is restricted to shotguns or archery only. These lakes are closed to antlerless deer harvest, except during archery season. Hunting and shooting other than that provided above is prohibited. The Director may designate "closed areas" for purposes of safety and/or security.

(P) Fishing is permitted in accordance with provisions provided in OAC 800:10, Subchapter 1. The Director may designate "closed areas" for purposes of safety and/or security.

(Q) No person may fish with more than two (2) poles, except during trout seasons at "Designated Trout Areas" where no person may fish with more than one (1) pole.

(R) Trotlines, throwlines, limblines, juglines, nets, seines, yo-yo's, spearguns, and the taking of any fish by noodling and the taking of bait minnows by any method is prohibited, except cast nets may be used to take bait for personal use at Lake Carl Etling.

(S) No person shall possess, consume or use any intoxicating beverage or low-point beer, as defined in Title 37, except in camping and parking areas on any lands or waterways subject to the control of the Oklahoma Department of Wildlife Conservation except U.S. Forest Service regulations shall apply to Black Kettle, Ouachita, Rita Blanca and Tiak Wildlife Management Areas.

(T) No person shall possess, consume, use or manufacture any controlled or dangerous substance, as defined in Title 63 on any lands or waterways subject to the control of the Oklahoma Department of Wildlife Conservation.

(U) All impoundments are catch and release only on the following Department property unless determined otherwise as published in the Oklahoma Fishing Guide: Cimarron Bluff WMA.

(2) **Blue River Public Fishing and Hunting Area.** The following rules apply:

(A) Hunting shall be permitted during regular hunting seasons and is restricted to shotgun and long bow and arrow only. No other use or other firearms are permitted.

(B) Blue River PFHA is closed to all except emergency traffic from 10:00 p.m. to 6:00 a.m. throughout the year.

(C) Glass beverage containers are prohibited at Blue River PFHA except in designated camping and parking areas.

(D) Fishing is permitted in accordance with provisions provided in OAC 800:10, Subchapter 1.

(E) Trotlines, throwlines, noodling, limblines, spearguns, juglines, nets, seines, and yo-yo's are prohibited throughout the year.

(F) No person may fish with more than two (2) poles, except only one (1) pole and line or rod and reel is permitted during the designated trout season.

(G) The following special rules pertain to the Carl R. and Ruth Walker Landrum Wilderness and Plaster Wildlife Management Unit:

(i) no camping

(ii) areas closed from 10:00 p.m. to 6:00 a.m.

(iii) no swimming

(iv) walk-in access only (except where wheelchair access is provided).

(H) The Blue River Campground Area is closed to swimming, effective January 1, 1990, unless suitable agreement can be reached between the Department and an acceptable second party who would be responsible for managing a designated swimming area for a three month season, annually. The Department will assume no cost or liability for development and operation of a designated swimming area.

(I) Effective July 1, 2000 the following rules apply to camping at the Blue River Campground Area:

(i) Camping is restricted to 14 days in a 30 consecutive day period. The Area Manager may grant extensions by issuing a permit for camping

beyond the 14 day limit. Such extensions shall be based upon degree of area use, anticipated weekend or holiday occupancy and recreation season. Extensions shall be requested 48 hours prior to the requested date of the extension.

(ii) Camping is permitted only in designated camping areas.

(iii) No person shall leave a vehicle, camper, tent or any personal property unattended for more than a 48-hour period without approval of the Area Manager.

(iv) If property must be removed, it will be at owners expense and liability. The unauthorized placement of camping equipment or other items on a campsite and/or personal appearance without overnight occupancy at a campsite for the purpose of reserving a designated campsite for future occupancy is prohibited.

(3) **Arcadia Conservation Education Area**

(A) Walk-in fishing permitted on all parts of the lake shoreline. No fishing in any ponds or wetland areas unless part of an ODWC sanctioned education event.

(B) Camping prohibited except as authorized by ODWC

800:10-5-3. Designated trout areas

(a) **Designated trout areas and seasons.** The following are the designated trout areas and trout seasons at each area:

(1) The Illinois River and its tributaries from the Tenkiller Ferry Reservoir Dam downstream to the Highway 64 Bridge near Gore, trout season is year-round.

(2) Blue River, within boundaries of the Blue River Public Fishing & Hunting Area (includes Landrum Wilderness Area and Plaster Wildlife Management Unit), trout season is from November 1 through March 31 of the following year; season is annual.

(3) Lake Watonga located within the boundaries of Roman Nose State Park, trout season is from the November 1 through March 31 of the following year; season is annual.

(4) The lower Mountain Fork River and tributaries from Broken Bow Dam downstream to U.S. Highway 70 bridge, excluding that portion from the mouth of Rough Branch Creek downstream to the Re-regulation dam. Trout season is year-round.

(5) Medicine Creek from Gondola Lake dam downstream to the State Highway 49 bridge, where trout season is from November 1 through March 15 of the following year; season is annual.

(6) Lake Carl Etling located within the boundaries of Black Mesa State Park, trout season is from November 1 through April 30 of the following year; season is annual,

(7) The Fourche Maline River from Carlton Lake Dam downstream to the Robbers Cave State Park boundary a distance of approximately one and one-quarter ($1\frac{1}{4}$) miles, trout season is from November 1 through March 15 of the following year; season is annual.

(8) ~~Lake Pawhuska~~Perry CCC Lake trout season is from November 1 through March 31 of the following year; season is annual.

(b) **General; area restrictions.** The following rules apply to designated trout areas and to specified locations within certain designated trout areas:

(1) It shall be unlawful to take or attempt to take fish from these areas during trout seasons except with rod and reel or pole and line, except collecting shad with cast nets is legal from the south boundary of the MarVal trout camp downstream to the Highway 64 bridge; only one (1) rod and reel or pole and line per person is allowed.

(2) Once a trout is reduced to possession by being placed on a stringer or in the creel of any type, said trout must count toward day's limit and cannot be released.

(3) Glass beverage containers are prohibited at designated trout areas except in designated camping and parking areas.

(4) The following areas are restricted to fishing tackle made by fly-tying or artificial lures made of wood, metal, glass, feathers, hair, synthetic fibers or hard plastic and barbless hooks only. The use of any substance in combination with restricted fishing tackle is prohibited:

~~(4) Fishing in the~~

(A) The lower Mountain Fork River trout stream below Broken Bow dam from the Lost Creek water control structure downstream to the first Highway 259 Scenic bridge, including Evening Hole and the Lost Creek stream channel, and from the State Park Dam downstream to the mouth of Rough Branch Creek~~, is restricted to artificial flies and lures only and barbless hooks only~~.

~~(5)~~

(B) Fishing in the lower Illinois River trout stream below Tenkiller dam from the USGS stream gauge downstream to the gravel pit county road is restricted to artificial flies and lures only and barbless hooks only, except that single barbed hooks, size 3/0 or larger, may be used only when fishing with natural bait.

~~(6)~~

(C) Fishing in the Blue River from its entry onto the Plaster Wildlife Management Unit/Landrum Wilderness Area downstream approximately $\frac{1}{2}$ mile to a marker cable is restricted to artificial flies and lures only and barbless hooks only during the period November 1 to March 1, annually.

(~~7~~5) All trout retained in possession must be kept separate from other anglers' fish on a stringer or in a creel that is clearly marked with that anglers name and license number.

800:10-5-5. Tailwaters

The following rules shall apply to fishing in tailwater areas below any Federal or Grand River Dam Authority (GRDA) dams:

(1) No person may fish with more than two (2) poles (or rods) when fishing within 1,000 feet downstream from any Federal or GRDA dam except at Wister, where no person

may fish with more than two (2) poles (or rods) when fishing below the dam down to the power-line at the confluence of the old and new river channels.

(2) Foul hooking (any fish hooked other than inside the mouth) is unlawful in the Arkansas River from Zink Lake dam downstream to the Interstate 44 bridge and in reservoir tailwaters (first 1,000 feet of stream below the base of any Federal or GRDA dam) except, in those tailwaters open to snagging, foul hooking is permitted for taking nongame fish only; foul-hooked game fish must be returned to the water immediately.

(3) Each angler must keep their fish separate, marked with their name and license number, when fishing in tailwaters, which is the first 1,000 feet below dam, except at Wister, where each angler must keep their fish separate, marked with their name and license number when fishing below the dam down to the power-line at the confluence of the old and new river channels.

[OAR Docket #15-417; filed 6-10-15]

TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION
CHAPTER 25. WILDLIFE RULES

[OAR Docket #15-418]

RULEMAKING ACTION:
PERMANENT final Adoption
RULES:
Subchapter 3. Hunting on Corps of Engineers Lands
800:25-3-2. Areas open to archery equipment and shotguns with pellets only [AMENDED]
800:25-3-3. Areas open to archery equipment only [AMENDED]
800:25-3-5. Areas open to archery equipment and all legal firearms other than centerfire rifles and handguns [AMENDED]
Subchapter 7. General Hunting Seasons
Part 19. Seasons on Areas Owned or Managed by the Oklahoma Department of Wildlife Conservation and the U.S. Fish and Wildlife Service
800:25-7-86.1. Camp Gruber Maneuver Training Center (CGMTC) [AMENDED]
800:25-7-90. Cherokee PHA [AMENDED]
Subchapter 37. Nuisance Wildlife Control Program
Part 1. Nuisance Wildlife Control Operators Program
800:25-37-1. Purpose [AMENDED]
800:25-37-2. Permit requirements [AMENDED]
800:25-37-3. Exemptions [REVOKED]
800:25-37-4. Reporting procedures [AMENDED]
800:25-37-5. Procedures and guidelines [AMENDED]
AUTHORITY:
Title 29 O.S., Section 3-103, 5-401 and HB 2618; Article XXVI, Section 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 4, 2014
COMMENT PERIOD:
December 1, 2014 - January 9, 2015
PUBLIC HEARING:
January 6, 2015
ADOPTION:
February 9, 2015
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 12, 2015
APPROVED BY GOVERNER'S DECLARATION:
Approved by Governor's declaration on June 8, 2015
FINAL ADOPTION:
June 8, 2015.
EFFECTIVE:
September 1, 2015
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 37. Nuisance Wildlife Control Program
Part 1. Nuisance Wildlife Control Operators Program
800:25-37-1. Purpose [AMENDED]
800:25-37-2. Permit requirements [AMENDED]
800:25-37-3. Exemptions [REVOKED]
800:25-37-4. Reporting procedures [AMENDED]
800:25-37-5. Procedures and guidelines [AMENDED]
Gubernatorial approval:
November 3, 2014
Register publication:
32 Ok Reg 270
Docket number:
14-962
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed rule amendments are to adjust regulations on several small Corps of Engineers properties for safety, clarification of acres, and simplicity including Kaw, Webbers Falls, Choteau, Ft. Gibson, Tenkiller and Robert S. Kerr. Standardize seasons and correct wording on Camp Gruber and Cherokee PHA. HB 2618 created a new Nuisance Wildlife Control Operator Permit (NWCO) and rules are needed to clarify permitting, certification, reporting, and procedures.
CONTACT PERSON:
Alan Peoples, Chief of Wildlife Division, Oklahoma Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, OK 73105. Phone: 405/521-2739 or Rhonda Hurst, APA Liaison, phone: 405/522-6279.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2015:

SUBCHAPTER 3. HUNTING ON CORPS OF ENGINEERS LANDS

800:25-3-2. Areas open to archery equipment and shotguns with pellets only

The following Corps of Engineers areas are open to archery equipment and shotguns with pellets only:

(1) Canton Lake: A 80-acre unit above Highway 58A in the Sandy Cove Area.

(2) Keystone Lake:

(A) A 460-acre unit including land north and south of the Cowskin North Recreation Area.

(B) A 200-acre unit on the west side of the north end of the Highway 64 bridge.

(C) A 530-acre unit north of the New Mannford Ramp area.

(D) A 480-acre unit east of the Cimarron Park area.

(E) A 100-acre unit north and south of the Pawnee Cove Access Point.

(F) A 200-acre unit in the Old Mannford Ramp area.

(G) A 280-acre unit on the south side of the road ending at Washington Irving North.

(H) A 120-acre unit west and south of the Sinnett Cemetery and south of the old Keystone road.

(I) A 200-acre unit south of Highway 51 on Bakers Branch.

(J) A 135-acre area on the west side of Walnut Creek (old Walnut Creek #3).

(3) Hugo Lake: Except, archery only during all deer seasons.

(A) A 2,373-acre unit in the Kiamichi Park Area.

(B) A 418-acre unit in the Salt Creek Area.

(C) A 478-acre unit in the Wilson Point Area.

(D) A 481-acre unit in the Virgil Point Area.

(E) A 280-acre unit in the Sawyer Bluff Area.

(F) A 60-acre unit in the Rattan Landing Area.

(G) A 500-acre unit in the embankment area above Hugo Dam.

(4) Tenkiller Ferry Lake: A 110-acre unit north of the asphalt road and east of Highway 10A.

(5) Copan Lake: Except, archery equipment only during all deer seasons.

(A) A 650-acre unit below the dam.

(B) A 100-acre unit east and southeast of Copan Point Park.

(C) Three islands north of Washington Cove Park.

(6) Fort Gibson Lake:

(A) A 300-acre unit on the north side of North Bay.

(B) A 800-acre unit on the south side of the Chouteau Creek, starting at Highway 69 and running east and south to Highway 33.

(C) A 320-acre unit across the lake from the Chouteau Bend Recreation Area.

(D) A 480-acre unit on the west side of Mallard Bay.

(E) A 103 -acre unit in Section 13 of the Blue Bill Point housing addition.

(F) A 160-acre unit west of the town of Murphy.

(G) A 650-acre unit on Pryor Creek beginning on the east side of Highway 69 in Sections 29, 30 & 31.

(H) A 190-acre unit in the south $\frac{1}{2}$ of Section 12, north of the Blue Bill Recreation Area.

(I) A 120-acre unit west of the town of Hulbert.

(7) Sardis:

(A) A 950-acre unit in the Potato Hills Area.

(B) A 100-acre unit in the Sardis Cove Area.

(8) Webbers Falls Lock and Dam 16:

(A) A 37-acre unit on the peninsula north of the lock and dam.

(B) A 150-acre unit in the Hopewell Park Area.

~~(C) A 50-acre unit in the Arrowhead Park Area, only open for hunting 1 December through 28 February.~~

(~~D~~C) A 150-acre unit in the Brewer's Bend Area, only open for hunting 1 December through 28 February.

(~~E~~D) A 50-acre unit south of the Spaniard Creek Area.

(~~F~~E) A 60-acre unit off Lock View access road and south of the project office.

~~(G) A 400-acre unit in the Three Forks Area.~~

(9) Lake Texoma:

(A) A 380-acre unit below Denison Dam.

(B) A 60-acre unit in the Willow Springs Area.

(C) A 100-acre unit on the north side of Alberta Creek.

(D) A 110-acre unit on the Limestone Creek Area.

(E) A 250-acre unit on the Treasure Island, North Island Group.

(F) A 500-acre unit southwest of McLaughlin Creek.

(G) A 1,100-acre unit in the Washita Point Area.

(H) A 1,200-acre unit north of Newberry Creek.

(I) A 300-acre unit south of the Butcher Pen Area.

(J) A 800-acre unit on either side of Highway 70 on the east side of the lake.

(K) A 1,000-acre unit in the Lakeside area.

(L) A 800-acre unit west of Platter.

(M) A 226-acre unit on the west side of Wilson Creek.

(10) Kaw Lake:

(A) A 280-acre unit in the Traders Bend Area.

(B) A 320-acre unit in the Sarge Creek Cove Area.

(C) A 220-acre unit in the Burbank Landing Area.

(D) A 110-acre unit between Sandy Park Swim Beach and Osage Cove.

(E) A 100-acre unit in the Bear Creek Cove, open for hunting only from 15 September through 15 February.

(F) A 186-acre unit south of Camp McFadden and north of a housing addition.

(11) Eufaula Lake:

(A) Open for archery equipment 1 October through 28 February and open for shotguns with pellets from 1 November through 28 February.

(i) A 165 -acre unit in the Highway 31 Landing Area.

(ii) A 128 -acre unit in Holiday Cove Recreation Area.

(iii) A 200-acre unit in Hickory Point Recreation Area.

(iv) A 90 -acre unit in the Gentry Creek Recreation Area.

(B) Open for hunting for all species that can be legally taken during legal open seasons by archery equipment and shotguns with pellets.

(i) A 275-acre unit known as Duchess Creek Island.

(ii) A 47-acre unit in Juniper Park.

(iii) A 99-acre unit in the Coal Creek area.

(iv) A 69-acre unit southwest of the city of Crowder.

(v) A 116-acre unit east of the city of Crowder.

(vi) A 95-acre unit in the Rock Creek Heights area.

(vii) A 63-acre unit around Highway 9 Marina.

(viii) A 411-acre unit in the area of Highway 9A.
(ix) A 247-acre unit known as Bunny Creek.
(x) A 251-acre unit in Sandy Bass Bay.
(xi) A 32-acre unit in Dam Site area.
(xii) A 95-acre unit below Eufaula Dam, north of the river.
(xiii) A 443-acre unit in the Longtown Creek area known as Round Tree Landing.

(C) Open for hunting for all species that can be legally taken during legal open seasons by archery equipment and shotguns with pellets, except for the 2nd Friday through Monday in December: A 395-acre unit in the Brooken Cove Recreational Area.

(12) Chouteau Lock and Dam 17: All lands beginning from the MK&T Railroad below Chouteau Lock and Dam 17 and continuing upstream to Newt Graham Lock and Dam 18, except that Pecan Park is open to hunting with archery equipment only and the Chouteau Lock and Dam 17 has a 600 yard"No Hunting" buffer area around both the lock and dam, and that Coal Creek Access Point and Afton Landing Park are closed to all hunting.

(13) Hulah Lake:
(A) A 200-acre unit in the Turkey Creek Point Area.
(B) A 60-acre unit below Hulah Dam.
(C) A 375-acre unit in the Caney Bend Area.

(14) Wister Lake: A 400-acre unit east of the uncontrolled spillway and Glendale Dike.

(15) Oologah Lake:
(A) A 80-acre unit on the east side of Blue Creek Park.
(B) A 180 acre-unit on the south side of Spencer Creek Park.
(C) A 120-acre unit east of Double Creek Park.

(16) Waurika Lake: All lands presently designated as open to public hunting, except fall turkey hunting is archery only. Spring turkey hunting is prohibited.

(17) Newt Graham Lock and Dam 18: All lands beginning from Newt Graham Lock and Dam 18 and continuing upstream to Interstate 44, except that the Newt Graham Lock and Dam 18 has a 600 yard "No Hunting" buffer area around it, and that Bluegill Access Point, Highway 33 Access Point and Bluff Landing Public Use Area are closed to all hunting.

800:25-3-3. Areas open to archery equipment only

The following Corps of Engineers areas are open to archery equipment only:

(1) Birch Lake: A 450-acre unit in the Birch cove, Outlet Park and Twin cove areas.

(2) Kaw Lake:
(A) A 400-acre unit in the Washunga Bay Area.
(B) A 600-acre unit in the McFadden Cove Area and below the dam embankment access road.
(C) A 236-acre unit in the Osage Cove Area open from 1 December to 31 December.
(D) A 60-acre unit south of Kaw City and west of Pioneer Park.

(3) Fort Gibson:
(A) A 515-acre unit on the south side of Mallard Bay.
(B) A 360-acre unit on the north side of the mouth of North Bay.
(C) A 50-acre unit south of Jackson Bay Area.
(D) A 150-acre area on the northeast end of Ranger Creek.
(E) A 488-acre unit on the south side of Whitehorn Cove Concession.
(F) ~~A 150-acre unit in the NW 1/4 of Section 29, T18N, R19E.~~A 100-acre unit in the Snug Harbor area.
(G) A 320-acre unit ~~South of North Bay and North of Wagoner City Park.~~on the south side of North Bay.
(H) ~~A 140-acre unit North of Long Bay and South of Wagoner City Park.~~A 320-acre unit on the north side of Long Bay.
(I) A 70-acre area on the upper end of Pryor Creek adjacent to the east side of Highway 69.
(J) A 36-acre area in Section 6, T16N, R20E.
(K) A 77-acre area on the north shore of Ranger Creek.
(L) A 166-acre area west of Taylor Ferry South Park in Sections 20 & 21, T17N, R19E.

(4) Copan Lake:
(A) A 50-acre unit north of Copan Point Park.
(B) A 50-acre unit north of the Post Oak area.
(C) A 5-acre unit west of Post Oak Park between the old and new Highway 10.
(D) A 340-acre unit north of the Washington Cove Park.

(5) Heyburn Lake: A 120-acre unit on the south side of the Dam Site Area and west of the outlet channel.

(6) Skiatook Lake:
(A) A 138-acre unit in the Osage Park Area.
(B) A 150-acre unit area below Skiatook Dam.
(C) A 120-acre unit in Hominy Landing.

(7) Hulah Lake: A 40-acre unit south of the Hulah State Park office.

(8) Pine Creek Lake:
(A) A 200-acre unit north of Highway 3 and south of the old highway.
(B) A 120-acre unit west of Little River Park.

(9) Fort Supply: A 183-acre unit in the south portion of Fort Supply Park.

(10) Arcadia Conservation Education Area: (Open by ODWC sanctioned controlled hunt through the City of Edmond Game and Fish Commission only.)
(A) A 500-acre unit $\frac{1}{2}$ mile North of Memorial Road on Midwest Boulevard
(B) 230-acre unit at Douglas and 150th street.

(11) Keystone Lake: A 570-acre area south of the town of Prue (old Walnut Creek #1).

(12) Lake Texoma:
(A) A 610-acre unit in the Burns Run Area
(B) A 125-acre unit south of Alberta Creek

(13) Hugo Lake:

(A) A 13 acre unit located across from Wilson Point in Section 18, east of Highway 147.

(B) A 40 acre unit located north of County Road E2040 in Section 6 and east of Highway 147.

800:25-3-5. Areas open to archery equipment and all legal firearms other than centerfire rifles and handguns

The following Corps of Engineers areas are open to archery equipment and all legal firearms other than centerfire rifles and handguns:

(1) Tenkiller Lake:

(A) A 320-acre unit between Tenkiller State Park and Cato Creek Landing public use area.

(B) A 300-acre unit southeast of Etta Bend.

(C) A 1,090-acre unit known as the Tenkiller Basin Wildlife Management Area, located south of the dam embankment, spillway and project office, the area is open for hunting of all species which may legally be taken during the open seasons by archery equipment, shotguns (utilizing federally approved non toxic shot only), and rimfire firearms, except that the area is closed to all hunting from 1 October through 15 November and deer hunting is by archery equipment only.

(D) A 240-acre unit south and southwest of Carters Landing Park.

(2) Robert S. Kerr Lock and Dam 15:

(A) A 90-acre unit in Little SanBois Creek Public Use Area.

(B) A 160-acre unit on the eastern portion of Cowlington Point Public Use Area.

(C) A 145-acre unit south of the Cowlington Point Public Use Area.

(~~C~~D) A 200-acre unit on the eastern portion of Short Mountain Cove Public Use Area.

~~(D) A 160-acre unit south of the Carters Landing Area.~~

(E) A 135-acre unit in the Applegate Cove Area.

SUBCHAPTER 7. GENERAL HUNTING SEASONS

PART 19. SEASONS ON AREAS OWNED OR MANAGED BY THE OKLAHOMA DEPARTMENT OF WILDLIFE CONSERVATION AND THE U.S. FISH AND WILDLIFE SERVICE

800:25-7-86.1. Camp Gruber Maneuver Training Center (CGMTC)

The following hunting and trapping seasons apply to designated open areas on Camp Gruber MTC.

(1) Quail: ~~Open the Monday following the close of deer gun season, closes same as statewide date.~~Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.

(2) Pheasant: Closed season.

(3) Prairie chicken: Closed season.

(4) Turkey-Fall:

(A) Archery: Same as statewide season dates, either-sex.

(B) Gun: Closed season.

(5) Turkey-Spring: Same as statewide season dates, 1 tom limit.

(6) Squirrel: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.

(7) Rabbit: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.

(8) Crow: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.

(9) Dove: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.

(10) Rail and gallinule: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.

(11) Common snipe: ~~Open the Monday following the close of deer gun season, closes same as statewide date.~~Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.

(12) Woodcock: ~~Open the Monday following the close of deer gun season, closes same as statewide date.~~Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.

(13) Deer-archery: Same as statewide season dates.

(14) Deer-primitive firearms: Same as statewide season dates, except open to antlerless hunting the first and second weekends only.

(15) Deer-gun: Same as statewide dates, except closed to antlerless deer hunting.

(16) Trapping: ~~Same as statewide season dates.~~Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.

(17) Pursuit with hounds: Same as statewide dates, except closed from the opening day of deer archery season through deer gun season~~. In addition, closed during~~ and spring turkey season.

(18) Predator/furbearer calling: Same as statewide dates, except closed from the opening day of deer archery season through deer gun season~~. In addition, closed during~~ and spring turkey season.

(19) Waterfowl: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.

800:25-7-90. Cherokee PHA

The following hunting and trapping seasons apply to the Cherokee PHA:

(1) Quail: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
(2) Pheasant: Closed season.
(3) Prairie chicken: Closed season.
(4) Turkey-Fall:
(A) Archery: Same as statewide season dates, either-sex.
(B) Gun: Closed season.
(5) Turkey-Spring: Same as statewide season dates, 1 tom limit on the PHA and GMA combined.
(6) Squirrel: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
(7) Rabbit: Same as statewide dates, except closed from the opening day of deer archery season through deer gun season.
(8) Crow: Same as statewide season dates except closed from the opening day of deer archery season through deer gun season.
(9) Dove: Same as statewide season dates except closed from the opening day of deer archery season through deer gun season.
(10) Rail and gallinule: Same as statewide dates except closed from the opening day of deer archery season through deer gun season.
(11) Common snipe: Same as statewide dates, except closed from the opening day of deer archery season through the deer gun season.
(12) Woodcock: Same as statewide dates, except closed from the opening day of deer archery season through the deer gun season.
(13) Deer-archery: Same as statewide season dates.
(14) Deer-primitive firearms: Same as statewide season dates, except open to antlerless hunting the first and second weekends only.
(15) Deer-gun: Same as statewide dates, except closed to antlerless deer hunting.
(16) Trapping: Same as statewide season dates, except closed ~~during deer gun season~~from the opening day of deer archery season through deer gun season.
(17) Pursuit with hounds: Same as statewide dates, except closed from the opening day of deer archery season through ~~of~~ deer gun season and spring turkey season.
(18) Predator/furbearer calling: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season and spring turkey season.
(19) Waterfowl: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.

SUBCHAPTER 37. NUISANCE WILDLIFE CONTROL PROGRAM

PART 1. NUISANCE WILDLIFE CONTROL OPERATORS PROGRAM

800:25-37-1. Purpose

(a) The purpose of this Subchapter is to establish guidelines for the permitting and certification of Nuisance Wildlife Control Operators (NWCO), and the procedures to be used by the NWCOs in controlling nuisance wildlife.
(b) NWCO will be defined as all individuals ~~(see exemptions section)~~ who offer their services to control nuisance wildlife.

800:25-37-2. Permit requirements

(a) The Nuisance Wildlife Control Operator's (NWCO) Permit will be issued to any person who has successfully completed the ~~NWCO certification course~~National Wildlife Control Training Program and successfully passed the certification exam to operate as a NWCO. The NWCO permit~~,~~ and a NWCO Complaint Report Form ~~and a Professional Trapping License*(see exemptions section),~~ must be carried at all times while conducting NWCO activities.
(b) The Nuisance Wildlife Control Operator's (NWCO) Permit authorizes an individual to capture, euthanize or relocate designated species of wildlife by safe and effective means at any time of the year and without limits which may be in force on certain species of wildlife provided the operator is acting on a documented nuisance wildlife complaint detailing the nature of the complaint, target species, method of control, effective dates of control, location, and customer information including the landowner's signature.
(c) Any person whose hunting or trapping license privileges are revoked and is not legally able to purchase a hunting or trapping license, shall not possess or operate under the authority of a NWCO permit.
(d) NWCO ~~Permitee~~Permittee must renew the NWCO permit annually. The annual NWCO permit is valid from January 1 through December 31. NWCOs must submit proof of:
(1) Prior year's Year End Report Summary;
~~(2) Current Professional Trapping License, Hunting License, Hunting and Fishing Legacy Permit or proof of exemption.~~
(2) Affidavit of Lawful Presence

800:25-37-3. Exemptions [REVOKED]

~~(a) Employees of the Oklahoma Department of Wildlife Conservation and the Oklahoma Cooperative Wildlife Services Program are exempt from all NWCO permit requirements while they are on duty.~~
~~(b) Employees of any city, town, or county government shall be exempt from the requirement of purchasing or possessing the Annual Professional Trapping License while they are on duty but are not exempt from the certification requirements.~~

800:25-37-4. Reporting procedures

(a) Nuisance Wildlife Complaint Report Forms ~~(available from the Department)~~ must be kept by NWCO for a period of three ~~(3)~~ years. Year End ~~Report~~ Summary Report forms will detail the number of each species of wildlife taken during the year.~~:~~
~~(1) number of each species of wildlife taken during the year.~~

~~(2) application for annual renewal.~~

(b) Such records shall be available for inspection at all reasonable times by authorized representatives of the Department.

(c) A summary of all Nuisance Wildlife Complaint Reports are to be submitted annually for each calendar year on or before January 30 of the following year and must include NWCO name or, Company name, address, and telephone number.

800:25-37-5. Procedures and guidelines

The following regulations for a NWCO permit shall be in effect to establish what species of wildlife may be taken under such a permit, the legal methods that may be used to control nuisance wildlife under such a permit, and the legal methods of disposal of nuisance wildlife under such permit.

(1) NWCO Permittees are only authorized to trap and relocate or euthanize the following wildlife species when such action is warranted by a valid nuisance wildlife complaint including, but not limited to: armadillo, badger, bats, beaver, bobcat, coyote, jackrabbit, cottontail rabbit, fox squirrel, gray squirrel, red fox, gray fox, porcupine, mink, ~~mountain lion,~~ muskrat, nutria, opossum, raccoon, river otter, snakes, striped skunk, and weasel.

(2) Problems and complaints concerning deer, elk, turkey, bear, alligator, antelope, mountain lion, big horn sheep, endangered or threatened species and game birds will only be handled when specifically authorized in writing by the Director of the ODWC .

(3) The sale, trade, barter, gifting, or retention of any wildlife, or parts thereof, except coyotes and beavers, taken under authority of a NWCO permit is prohibited, except wildlife legally taken during established trapping seasons and in accordance with all other pertinent rules and laws not associated with NWCO rules may be sold or otherwise disposed of as provided by law.

(4) The sale, trade, barter, gifting or retention of beavers, coyotes, or parts thereof, taken under authority of a NWCO permitted is allowed with the proper documentation containing the taker's name and permit number.

(5) NWCO permittees must follow all state and federal laws that apply to the taking of wildlife with the exception of season dates and bag limits except as otherwise provided in this section.

(6) Only damage or nuisance complaints affecting humans and/or their property may be controlled. Complaints involving conflicts between two or more wildlife species are not valid nuisance wildlife complaints.

(7) All wildlife taken under a NWCO permit shall be taken and disposed of in a manner to ensure safe and effective handling and/or euthanasia. Euthanasia of a captured animal is to be performed under the guidelines adopted by the American Veterinary Medicine Association.

(8) Traps and other similar devices set by~~, or under the direction of,~~ a NWCO shall be checked at least once every 24 hours and all animals removed. Traps must have the Operators name and NWCO permit number attached.

(9) The following are legal methods of control under a NWCO permit:

(A) box or live trap;

(B) smooth-jawed single spring or double spring offset steel leg-hold traps with a jaw spread of no more than eight inches;

(C) ~~conibear~~body gripping style traps less than size 330, except size 330 may be used for water sets for beavers only;

(D) shooting where permitted by law or by city ordinance; ~~and~~

(E) snares which shall have a locking device that prevents the loop from closing to a circumference less than ten (10) inches if the snare is set on or just above ground level. If the snare is set in an attic or similar situation there is no loop restriction~~.~~; and

(F) enclosed trigger traps.

(10) All trapping devices must be placed in a manner that will:

(A) minimize the risk of non-target animals;

(B) minimize the risk to public and pets; and

(C) be out of the view of the general public.

(D) signs must be posted in conspicuous places in order to inform the public that traps are in use.

(E) signs must have minimum dimensions of ~~5"~~ five inches by ~~8"~~eight inches and the wording "TRAPS" must be included and be conspicuous on the signs and printed in letters at least ~~2"~~two inches tall.

(11) Shooting with firearms shall be subject to all state, county and municipal restrictions and ordinances. Night shooting is allowed for nuisance beavers only under the following conditions:

(A) NWCO must notify the game warden(s) in the county where activity will occur twenty-four (24) hours prior to such activity;

(B) must be conducted in a safe manner to prevent injury to people, livestock and damage to personal property.

(12) When relocation is authorized, the NWCO may have the wildlife in possession for no more than 24 hours unless specifically authorized by the Department.

(13) Wildlife not euthanized, ~~that~~but is relocated, shall be released ~~at least five(5) miles~~ outside any city limit but not more than one county distant from the capture site and must be within the state of Oklahoma.

(14) Wildlife shall not be released on private land without written permission of the landowner or landowner designee.

(15) Wildlife shall not be released on public land without first obtaining written permission from the governmental entity owning or administering the release property.

(16) Captured wildlife that appears to be sick or diseased shall be euthanized rather than relocated. Burial or incineration of these carcasses is required.

[OAR Docket #15-418; filed 6-10-15]

TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION
CHAPTER 30. DEPARTMENT OF WILDLIFE LANDS MANAGEMENT

[OAR Docket #15-419]

RULEMAKING ACTION:
PERMANENT Final Adoption
RULES:
Subchapter 1. Use of Department Managed Lands
800:30-1-7. Livestock and feral hogs [AMENDED]
AUTHORITY:
Title 29 O.S., Section 3-103, 5-401; Article XXVI, Section 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 4, 2014
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APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 8, 2015
FINAL ADOPTION:
June 8, 2015.
EFFECTIVE:
September 1, 2015
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The purpose of the proposed rule is to make it illegal to remove feral hogs from a Wildlife Management Area (WMA) that are still alive.
CONTACT PERSON:
Alan Peoples, Chief of Wildlife Division, Oklahoma Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, OK 73105. Phone: 405/521-2739 or Rhonda Hurst, APA Liaison, phone: 405/522-6279.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2015:

SUBCHAPTER 1. USE OF DEPARTMENT MANAGED LANDS

800:30-1-7. Livestock and feral hogs

(a) **Livestock.** It is unlawful for any person to willfully or neglectfully allow unauthorized livestock to encroach upon any lands owned or managed by the Oklahoma Department of Wildlife Conservation.

(b) **Horses.** No person shall ride, drive, lead or keep a horse or other livestock on lands owned or managed by the Oklahoma Department of Wildlife Conservation, except Honobia Creek WMA and Three Rivers WMA, during the period of October 1 through January 1 and spring turkey season, annually without prior written approval from the Oklahoma Department of Wildlife Conservation. Individuals or parties of less than 25 may ride on areas with prior written approval of the local biologist during the closed period if no hunting conflict is determined by the biologist. U.S. Forest Service regulations shall apply to those lands owned by the Forest Service. See 800:25-7-71 [REVOKED] (renumbered to 800:30-1-20) also.

(c) **Use of horses.** Hunting on, from or with the aid of horses or mules on WMAs (except U.S. Forest Service lands, Honobia Creek WMA and Three Rivers WMA) is prohibited during daylight hours during the period of October 1 - January 1 and during spring turkey season. Persons holding nonambulatory permits or motor vehicle permits are exempt.

(d) **Feral hogs.** Feral hogs may be taken on lands owned or managed by the Oklahoma Department of Wildlife Conservation during any established hunting season with methods authorized by the Department for that hunting season, except that during any open deer and/or turkey season only appropriate methods, hunting hours, and weapons for that deer and/or turkey season are authorized for taking or pursuing feral hogs. No feral hogs may be removed alive from a WMA.

[OAR Docket #15-419; filed 6-10-15]

TITLE 810. OKLAHOMA WORKERS' COMPENSATION COMMISSION
CHAPTER 1. GENERAL INFORMATION

[OAR Docket #15-561]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
810:1-1-1 through 810:1-1-7 [NEW]
AUTHORITY:
Oklahoma Workers' Compensation Commission; 85A O.S. §§ 1 et seq.
SUBMISSION OF PROPOSED RULES TO GOVEROR AND CABINET SECRETARY:
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n/a
ANALYSIS:
This chapter is for compliance with the Oklahoma Administrative Procedures Act, 75 O.S. § 250.1 et seq., and describes the purposes, functions

and processes of the Oklahoma Workers' Compensation Commission. This chapter sets forth a general description of the Workers' Compensation Commission, reviews the functions performed by the Commission and briefly presents an overview of the statutory role of the Commission, its organization and structure.

CONTACT PERSON:

Kim Bailey, General Counsel, 405-522-4557, kim.bailey@wcc.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

810:1-1-1. Purpose

(a) This Chapter has been adopted for the purpose of compliance with the Oklahoma Administrative Procedures Act, 75 O.S. § 250.1 et seq., and to describe the purposes, functions and processes of the Oklahoma Workers' Compensation Commission.

(b) The purpose of this Chapter is to set out a general description of the Oklahoma Workers' Compensation Commission, review the functions performed by the Commission, and briefly present an overview of the statutory role of the Commission, its organization and structure.

810:1-1-2. Definitions

In addition to the terms defined in 85A O.S. § 2, the following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Administrative Law Judge" means an Administrative Law Judge of the Commission to whom the Commission has delegated by order or otherwise, the authority to conduct a hearing.

"AWCA" means the Administrative Workers' Compensation Act, 85A O.S. § 1, et seq.

"Claimant" means a person who claims benefits for an alleged work injury, occupational disease or illness, or death, pursuant to the provisions of the AWCA.

"Commission" means the Oklahoma Workers' Compensation Commission, a designee, or an Administrative Law Judge to whom the Commission has delegated responsibility as authorized by 85A O.S. § 21(D).

"Executive Director" means the Executive Director of the Commission.

"Self-insurer" means any duly qualified individual employer or group self-insurance association authorized by the Commission to self-fund its workers' compensation obligations.

"Workers' Compensation Commission fee schedule" means a state mandated schedule of maximum allowable reimbursement levels for health care providers, including hospitals, ambulatory surgical centers, and inpatient rehabilitation facilities, rendering reasonable and necessary health care services and supplies to an injured employee for a compensable injury pursuant to the Oklahoma workers' compensation laws.

810:1-1-3. General description of the Oklahoma Workers' Compensation Commission

(a) **History.** The Oklahoma Workers' Compensation Commission was created pursuant to legislation enacted in 2013 and is responsible for administration of the Administrative Workers' Compensation Act, 85A O.S. § 1, et seq., except as otherwise provided by law.

(b) **Composition.** The Commission is comprised of three members who are appointed by the Governor and confirmed by the Senate for staggered terms. The initial appointments are for two (2), four (4) and six (6) years respectively, as determined by the Governor. Subsequent terms are for six (6) years. One of the initial appointments must be from a list of three (3) nominees selected by the Speaker of the Oklahoma House of Representatives. The Chair of the Commission is appointed by the Governor from among the Commission members. The Chair organizes, directs and develops administrative work, employs administrative staff within budgetary limitations, and performs other duties authorized by law or prescribed by the Commission. The Chair appoints an administrator who is the administrative officer of the Commission and manages the activities of its employees and performs other duties prescribed by the Chair or Commission. The title of the administrative officer shall be Executive Director. The Commission may appoint as many Administrative Law Judges and other personnel as necessary within budgetary limitations to effectuate the AWCA.

(c) **Duties.** It is the Commission's responsibility to apply the law as set out in the AWCA. The Commission has adjudicative, administrative and regulatory functions. Those functions include providing fair and timely procedures for the resolution of workers' compensation disputes; monitoring claims and benefit payments to injured workers, processing settlements and requests for changes in physicians; ensuring that employers maintain required insurance coverage; processing and approving applications of employers to act as self-insurers; processing and approving applications related to independent physicians, mediators and case managers; developing and maintaining a workers' compensation fee schedule; providing legal information and assistance to interested persons who have questions concerning the Oklahoma workers' compensation law; and participating in programs to explain the law and functions of the Commission to the general public.

(d) **Main offices of Commission.** The main offices of the Commission are located at: Denver Davison Building, 1915 North Stiles Avenue, Oklahoma City, Oklahoma 73105.

810:1-1-4. Petitions to promulgate, amend or repeal rules

(a) Individuals or organizations who wish to petition the Commission to promulgate, amend or repeal a rule must submit a written request to the Executive Director, 1915 North Stiles Avenue, Oklahoma City, Oklahoma 73105. The request must include:

(1) A statement in support of the proposal made. The supporting statement should refer to the statutory basis for the proposal and include any specific objections to existing rules or practices, and set forth the policy considerations which support adoption of the proposal;

(2) The name, address and telephone number of the person making the request;

(3) The name, address and telephone number of the agency or organization the person represents, if any;

(4) The number used to identify the rule if the request is to amend or repeal an existing rule; and

(5) The proposed language if the request is to amend an existing rule or adopt a new rule.

(b) The Executive Director or the Executive Director's designee will present such petition at the next regularly scheduled meeting of the Commission for consideration and disposition. The petitioner shall be given reasonable notice of the date, time and place of such meeting, and shall be informed in writing within a reasonable period of time of the Commission's ruling in the matter.

810:1-1-5. Petition for declaratory ruling relating to rules

(a) Whenever any person has an actual controversy over the applicability of a specific rule in this Title, that person may petition the Commission for a declaratory ruling as to the applicability of the rule and its effect on the petitioner. In petitioning the Commission for a declaratory ruling, the following procedures must be followed:

(1) The petition must be in writing and submitted to the Executive Director, 1915 North Stiles Avenue, Oklahoma City, Oklahoma 73105;

(2) The petition shall state with specificity the rule in question;

(3) The petition shall state clearly and with specificity the basis for the action and the action or relief sought;

(4) The petition shall pose the specific question(s) to be answered by the Commission;

(5) The petitioner must allege that an actual controversy exists over the applicability of the rule and must state with specificity the nature of the controversy;

(6) The petitioner must have an interest which is directly affected by the rule in which a ruling is requested and must plainly state that interest in the petition;

(7) The petition must be accompanied by a memorandum setting forth all relevant facts and law in support thereof; and

(8) The petitioner or the petitioner's authorized representative shall print his or her name, address and telephone number on the petition and sign it.

(b) On receipt of the petition, the Commission may:

(1) conduct such hearing, investigation or inquiry as it deems proper;

(2) issue a written ruling; or

(3) decline to make a ruling when:

(A) The Commission lacks jurisdiction over the issue or issues presented;

(B) There is no actual controversy;

(C) The petitioner would not be directly affected by a resolution of the issue presented;

(D) The petitioner does not provide sufficient facts or other information on which the Commission may base a ruling;

(E) The issue on which a determination is sought is or should be the subject of other administrative or civil litigation or appeal; or

(F) It appears to the Commission that there is other good cause why a declaratory ruling should not be made.

(c) The petitioner shall be informed in writing within a reasonable period of time of the Commission's disposition of the matter.

810:1-1-6. Requests for agency public information

(a) Public access to Commission records is subject to the Oklahoma Open Records Act, 51 O.S. § 24A.1, et seq. and 85A O.S. § 120. Any person making a request for a Commission record shall comply with the following:

(1) The request must be in writing and directed to the Clerk of the Commission when the request is to access workers' compensation claims information, to the Commission's Insurance Division Director when the request is for workers' compensation insurance related information maintained by the Commission, or to the Executive Director for all other requests.

(2) Requests to access workers' compensation claims information are subject to the written request and search fee requirements of 85A O.S. § 120, unless an exemption outlined in the law applies. The Commission may request information of a requester sufficient to determine whether or not an exemption pertains.

(A) To access workers' compensation claim information, the request must be made in writing, on a form prescribed by the Commission. The request form requires identification of the person requesting the information and the person for whom a search is being made. The request form must contain an affidavit signed by the requester under penalty of perjury stating that the information sought is not requested for a purpose in violation of state or federal law. Those making a request shall pay the Commission One Dollar ($1.00) per search request, not to exceed One Dollar ($1.00) per claims record of a particular worker, plus applicable copy charges set forth in 85A O.S. § 119(A), any applicable fees according to the Oklahoma Open Records Act, 51 O.S. § 24A.5(3), and certification fees if any.

(B) Electronic searches of workers' compensation claims data using public terminals at the Commission's offices may be made. The search function permits searches using the name of a claimant or the Commission file number. Certain information related to the search criteria will be displayed on the terminal. Access to additional claims information pertaining to the search results is subject to the written request and search fee requirements described in this Paragraph.

(3) Requests not subject to Paragraph (2) of this Subsection, should describe the record(s) requested, indicate the name of the party making the request, and have the party's mailing address and telephone number. The requesting party shall pay for copies and research of such

records in accordance with 85A O.S. § 119(A) and the Oklahoma Open Records Act, 51 O.S. § 24A.5(3), and, if applicable, for certification of the record according to a fee established by the Commission if any.

(4) Copy charges may be waived at the Commission's discretion for copies requested by the media or by a public officer or public employee in the performance of his or her duties on behalf of a governmental entity.

(b) This Section does not apply to records specifically required by state or federal law, or by state or federal administrative rule, or by order of a court of competent jurisdiction, to be kept confidential, including, but not limited to, financial data obtained by or submitted to the Commission for the purpose of obtaining a license or permit and records subject to proprietary agreements, confidentiality orders and sealed exhibits.

810:1-1-7. Forms

(a) The Commission utilizes a wide variety of forms in the administration of the Administrative Workers' Compensation Act, 85A O.S. § 1, et. seq. The forms are subject to frequent change because of changes in the law and for administrative reasons.

(b) Forms are available from the Commission's Records Department at the main offices of the Commission, 1915 North Stiles Avenue, Oklahoma City, Oklahoma 73105 and may be accessed through the Commission website at http://www.wcc.ok.gov. Persons may contact the Commission's Counselor Division to request forms and general information about completing and submitting them.

[OAR Docket #15-561; filed 6-15-15]

TITLE 810. OKLAHOMA WORKERS' COMPENSATION COMMISSION CHAPTER 10. PRACTICE AND PROCEDURE

[OAR Docket #15-562]

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810:10-1-1 through 810:10-1-13 [NEW]
Subchapter 3. Informal Dispute Resolution Processes [NEW]
810:10-3-1 through 810:10-3-12 [NEW]
Subchapter 5. Hearings Conducted by Administrative Law Judges and Commissioners [NEW]
Part 1. Commencement of Claims and Review of Qualified Employer Benefit Determinations [NEW]
810:10-5-1 through 810:10-5-7 [NEW]
Part 3. Subsequent Pleadings [NEW]
810:10-5-15 through 810:10-5-19 [NEW]
Part 5. Prehearing Proceedings [NEW]
810:10-5-30 through 810:10-5-31 [NEW]
Part 7. Initial and Subsequent Proceedings [NEW]
810:10-5-45 through 810:10-5-54 [NEW]
Part 9. Post Order Relief [NEW]
810:10-5-66 [NEW]
810:10-5-67 [RESERVED]
810:10-5-68 [NEW]
Part 11. Contempt [NEW]
810:10-5-75 [NEW]
Part 13. Dismissals [NEW]
810:10-5-85 [NEW]
Part 15. Settlements [NEW]
810:10-5-95 [NEW]
Part 17. Fees [NEW]
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Subchapter 3. Informal Dispute Resolution Processes [NEW]
810:10-3-1 through 810:10-3-12 [NEW]
Subchapter 5. Hearings Conducted by Administrative Law Judges and Commissioners [NEW]
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810:10-5-15 through 810:10-5-19 [NEW]
Part 5. Prehearing Proceedings [NEW]
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810:10-5-75 [NEW]
Part 13. Dismissals [NEW]
810:10-5-85 [NEW]
Part 17. Fees [NEW]
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810:10-5-67 [RESERVED]
Part 15. Settlements [NEW]
810:10-5-95 [NEW]

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This Chapter provides rules of practice and procedure, both informal and formal, to govern all workers' compensation proceedings coming before the Commission for disposition pursuant to the Administrative Workers' Compensation Act (AWCA). The rules of this Chapter govern all proceedings before the Commission, the Commissioners, any Commission Administrative Law Judge, the Executive Director, or other officer or employee of the Commission, regarding and related to a work injury, occupational disease or illness, or death, occurring on and after February 1, 2014, as provided in the AWCA.
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 1. GENERAL PROVISIONS

810:10-1-1. Purpose

This Chapter provides rules of practice and procedure, both informal and formal, to govern all workers' compensation proceedings coming before the Commission for disposition pursuant to the AWCA.

810:10-1-2. Scope

(a) The rules of this Chapter shall be known as the "Oklahoma Workers' Compensation Commission Rules of Practice and Procedure", and may be cited as OAC 810:10.
(b) The rules of this Chapter shall govern all proceedings before the Commission, the Commissioners, any Commission Administrative Law Judge, the Executive Director, or other officer or employee of the Commission, regarding and related to a work injury, occupational disease or illness, or death, occurring on and after February 1, 2014, as provided in the AWCA.
(c) The rules of this Chapter shall not be construed as limiting the Commission's authority to grant an exception, for good cause shown, to any rule contained herein, unless otherwise precluded by law.

810:10-1-3. Definitions

In addition to the terms defined in 85A O.S. § 2, the following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Acceptable Electronic Signature Technology" means technology that is capable of creating a signature that is unique to the person using it, is capable of verification, is under the sole control of the person using it, and is linked to the data in such a manner that if the data is changed, the electronic signature is invalidated.

"Administrative Law Judge" means an Administrative Law Judge of the Commission to whom the Commission has delegated by order or otherwise, the authority to conduct a hearing.

"Attorney" means an attorney licensed to practice law in Oklahoma and a member in good standing of the Oklahoma Bar Association, or an out-of-state attorney.

"AWCA" means the Administrative Workers' Compensation Act, 85A O.S. §§1, et seq.

"Business day" means a day that is not a Saturday, Sunday, or legal holiday.

"Certified workplace medical plan" means an organization that is certified by the Oklahoma State Department of Health to provide management of quality treatment to injured employees for injuries and diseases compensable pursuant to the workers' compensation laws of the State of Oklahoma.

"Claim for compensation" means a Commission prescribed form filed by or on behalf of an injured worker or the worker's dependents to initiate a claim for benefits pursuant to the AWCA for an alleged work injury, occupational disease or illness, or death.

"Claimant" means a person who claims benefits for an alleged work injury, occupational disease or illness, or death, pursuant to the provisions of the AWCA.

"Commission" means the Oklahoma Workers' Compensation Commission, a designee, or an Administrative Law Judge to whom the Commission has delegated responsibility as authorized by 85A O.S. § 21(D).

"Commission Chair" means the Chair of the Oklahoma Workers' Compensation Commission.

"Continuance" means postponing a hearing from the time or date set, and rescheduling it on a later time or date.

"Controverted claim" means there has been a contested hearing before the Commission over whether there has been a compensable injury or whether the employee is entitled to temporary total disability, temporary partial disability, permanent partial disability, permanent total disability, or death compensation.

"Discovery" means the process by which a party may, before the hearing, obtain evidence relating to the disputed issue or issues from the other parties and witnesses.

"Document" means any written matter filed in a cause, including any attached appendices.

"Electronic Signature" means an electronic symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

"Executive Director" means the Executive Director of the Commission.

"Good cause" means, in the context of a request for continuance or failure of a party to comply with the Rules of this Chapter, circumstances beyond the party's control or that the party could not reasonably foresee. In the context of a claim, defense, or order, it means a reasonable legal basis.

"Insurance carrier" means any stock company, mutual company, or reciprocal or interinsurance exchange authorized

to write or carry on the business of workers' compensation insurance in this state, and includes an individual own risk employer or group self-insurance association duly authorized by the Commission to self fund its workers' compensation obligations.

"Joint Petition Settlement" means a settlement between the employer/insurance carrier and the employee, of all or some issues and matters in a claim for compensation.

"Legal holiday" means only those days declared legal holidays pursuant to 25 O.S. § 82.1 or by proclamation of the Governor of Oklahoma.

"Mediation" means the process of resolving disputes with the assistance of a mediator, outside of a formal administrative hearing.

"Out-of-state attorney" means a person who is not admitted to practice law in the State of Oklahoma, but who is admitted in another state or territory of the United States, the District of Columbia, or a foreign country.

"Pro se" means without an attorney.

"Proceeding" means any action, case, hearing, or other matter pending before the Commission.

"Representative" means a person designated in writing by an injured employee, person claiming a death benefit, employer, insurance carrier or health or rehabilitation provider, to assist or represent them before the Commission in a matter arising under the AWCA.

"Sanction" means a penalty or other punitive action or remedy imposed by the Commission on an insurance carrier, representative, employee, employer, or health care provider for an act or omission in violation of the AWCA or a rule, judgment, order, or decision of the Commission.

"Self-insurer" means any duly qualified individual employer or group self-insurance association authorized by the Commission to self fund its workers' compensation obligations.

"Subpoena" means a Commission issued writ commanding a person to attend as a witness to testify or to produce documents, including books, papers and tangible things, at a deposition or at a hearing.

"Workers' compensation fee schedule" means a state mandated schedule of maximum allowable reimbursement levels for health care providers, including hospitals, ambulatory surgical centers, and inpatient rehabilitation facilities, rendering reasonable and necessary health care services and supplies to an injured employee for a compensable injury pursuant to the Oklahoma workers' compensation laws.

810:10-1-4. Reporting injuries or deaths

(a) **Employer's first report of injury.**

(1) Within ten (10) days after the date of receipt of notice or of knowledge of death or injury that results in more than three days' absence from work for the injured employee, the employer shall send a report thereof to the Commission as provided in 85A O.S. § 63, on a form prescribed by the Commission that includes, in addition to other required information, the worker's full name and date of birth, and the last four digits of the worker's Social Security number. The report shall be known as the Employer's First Notice of Injury. The employer also shall send the report to the employer's insurance carrier, if any, within the ten day period.

(2) The report shall contain the information required by 85A O.S. § 63 and any additional information prescribed by the Commission.

(b) **Additional reporting requirements.** Reports or additional reports with respect to the death, injury and of the condition of the employee shall be sent by the employer to the Commission at such time and in such manner as the Commission may prescribe.

(c) **Evidentiary effect of reports.** Any report provided pursuant to this Section shall not be evidence of any fact stated in the report in any proceeding with respect to the injury or death for which the report is made.

(d) **Sanctions.** Failure or refusal of an employer to comply with the reporting requirements of this Section may subject the employer to sanctions prescribed in 85A O.S. § 63.

810:10-1-5. Commencing temporary total disability compensation and medical benefits

(a) Upon receipt of notice or of knowledge that an employee has been injured, the employer has an obligation under the AWCA to provide that employee with reasonable and necessary medical treatment for the injury, and to pay temporary total disability compensation if the employee is unable to perform the employee's job, or any alternative work offered by the employer, for more than three (3) calendar days. No order from the Commission directing the employer to provide these benefits is required.

(b) The first installment of temporary total disability compensation is due on the fifteenth day after the employer has notice of the injury. By that date, all temporary total disability compensation then accrued shall be paid to the employee, and weekly installment payments shall be made thereafter, unless the employer controverts the employee's right to compensation as provided in 85A O.S. § 86 by timely filing a Commission prescribed Employer's Intent to Controvert Claim form with the Commission. To be timely, the employer must file the Employer's Intent to Controvert Claim within fifteen (15) days after notice of the injury, or by such later date as fixed by the Commission, in its discretion, upon the employer's written request for a filing extension. The request must be postmarked within the fifteen-day period after the employer has notice of the injury. The employer shall send a copy of the Employer's Intent to Controvert Claim to the employee and so certify on the form when filed. The employee may request a hearing before an Administrative Law Judge of the Commission no sooner than ten (10) days after filing a claim for compensation with the Commission as provided in 810:10-5-2.

810:10-1-6. Terminating temporary compensation

(a) Temporary compensation may be terminated if the worker has no claim for compensation on file with the Commission. If there is a claim for compensation on file, the

employer may terminate temporary compensation without a Commission order only if one of the following events occurs:

(1) The employee returns to full-time employment;

(2) The employee, or if represented, the employee's attorney, receives written notification from the employer that the temporary total disability benefits were terminated for a cause stated in 85A O.S. § 45(A)(2). The cause shall be specified in the notice;

(3) The employee is incarcerated for a misdemeanor or felony conviction in this state or another jurisdiction;

(4) The employee files a permanent disability rating report or a request for hearing before the Commission on permanent disability;

(5) The parties voluntarily agree in writing to terminate temporary compensation;

(6) The employee dies; or

(7) Any other event that causes temporary compensation to be lawfully terminated without Commission order as provided in 85A O.S. § 62, or as otherwise permitted in the AWCA.

(b) In all other instances, temporary compensation may be terminated only by Commission order. An employer may request a hearing on the termination of temporary total disability benefits by filing a CC-Form-13 Request for Prehearing Conference with the Commission and concurrently mailing a copy thereof to the opposing parties. The CC-Form-13 mailed to the opposing parties shall include a copy of all evidentiary exhibits, including any medical report, relied upon by the employer in support of terminating temporary compensation.

(c) If an employer is found to have improperly terminated temporary compensation, the Commission may require the employer to file a new CC-Form-13 Request for Prehearing Conference and show full compliance with this Section before a hearing on the employer's request to terminate temporary compensation will be conducted.

(d) If the employee files an objection to the employer's termination of temporary total disability benefits within ten (10) days of the termination, the employee may request an expedited hearing on the issue of reinstatement of the benefits as provided in 85A O.S. § 45(A)(2).

810:10-1-7. Forms and other documents generally

(a) All forms, pleadings, proposed orders, correspondence or other documents submitted to the Commission shall:

(1) be typewritten or printed legibly on 8 $\frac{1}{2}$" by 11" paper, unless electronically filed pursuant to rules of the Commission;

(2) refer to the Commission file number if assigned;

(3) bear the typed or printed name, mailing address, telephone number, and signature, of the person who prepared the document, including the firm name if applicable; and

(4) include the attorney's Oklahoma Bar Association number, if the document is submitted by an attorney licensed to practice law in Oklahoma.

(b) The signature of an attorney or party constitutes the following:

(1) a certification that the claim, request for benefits, request for additional benefits, controversion of benefits, request for a hearing, pleading, form, motion, or other paper has been read;

(2) that to the best of his or her knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and

(3) that it is not brought for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(c) If a claim, request for benefits, request for additional benefits, request for hearing, pleading, motion, or other paper:

(1) is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant; or

(2) is signed in violation of the AWCA, the Commission, including Administrative Law Judges, on motion or on their own initiative, shall impose an appropriate sanction as prescribed in 85A O.S. § 83.

(d) An electronic signature using acceptable electronic signature technology may be used to sign a document or a form and shall have the same force and effect as a hand written signature.

(e) All documents filed with the Commission shall be served on all parties and shall have a certificate of service setting forth the manner of such service. A copy of all correspondence addressed to the Commission with respect to a pending matter shall be sent to all parties at the time it is sent to the Commission and shall list the parties to whom copies were sent.

(f) All forms filed with the Commission shall be file-stamped by the Clerk of the Commission on the date of receipt.

810:10-1-8. Display and use of an individual's Social Security number

Unless otherwise ordered or as otherwise provided by law, every filer may limit the employee's or the employee's dependent's Social Security number to only the last four digits of that number in all pleadings, papers, exhibits or other documents, or Commission forms prescribed by the Commission. The responsibility for following this provision rests solely with counsel, the parties, or any other filer. The Clerk of the Commission shall not have any duty to review documents for compliance with this provision. If a filer includes the Social Security number in any document filed with the Commission, the document becomes a public record as filed. Nothing in this Section shall impact the confidentiality of any records the Legislature has determined are confidential.

810:10-1-9. Who may appear before Commission

(a) Attorneys licensed to practice law in Oklahoma and members in good standing of the Oklahoma Bar Association may appear on behalf of parties to litigation before the Commission and in Joint Petition Settlement proceedings before the Commission. Legal interns licensed by the Oklahoma

Supreme Court may appear on behalf of a party only on matters properly within the scope of their license. Out-of-state attorneys who have complied with the requirements of Chapter 1, Appendix 1, Article II, Section 5 of Title 5 of the Oklahoma Statutes may appear on behalf of a party with leave of the Commission. The attorney shall file an entry of appearance with the Commission as provided in 810:10-1-10.

(b) Persons other than licensed attorneys, including adjusters, may file standard, administrative reporting forms such as the Employer's First Notice of Injury and notice of compliance with payment and reporting obligations related to Multiple Injury Trust Fund assessments (85A O.S., § 31) and Self-insurance Guaranty Fund assessments (85A O.S., § 98), which are required by law and/or Commission rules, are not considered legal pleadings, and the submission of which in no way is intended as an act of legal representation. Persons other than licensed attorneys may not assume an advocate's role or introduce evidence or examine witnesses in proceedings before the Commission or an Administrative Law Judge.

(c) An individual may appear pro se or by an attorney. A corporation, limited liability company, insurance carrier, individual own risk employer, and group self-insurance association, may appear only by its attorney.

810:10-1-10. Contact information for service of notice; entry of appearance; leave to withdraw

(a) **Contact information for service of notice.**

(1) Each party, upon instituting or responding to any proceedings before the Commission, shall file with the Commission the party's address, or the name and address of any agent upon whom notices shall be served to such party or agent at the last address so filed with the Commission. A party, including a claimant acting pro se, shall promptly communicate any change of address to the Commission's Docket Office.

(2) An attorney of record, as defined in Subsection (d) of this Section, shall give notice of a change of address by providing the Commission's Docket Office with a copy of the letterhead containing the new address and a list containing the Oklahoma Bar Association number of each attorney member of the firm who regularly appears before the Commission.

(3) Notice and service of documents may be made as prescribed in 12 O.S. § 2005(B). It is the responsibility of parties to an action before the Commission to provide a current mailing address, and email address if available, to Commission staff. Notices and documents sent to the last known address or email address on file with the Commission, are presumed delivered in a timely manner, and presumed received.

(b) **Entry of appearance.**

(1) An entry of appearance shall be filed by any attorney or law firm representing any party in any proceeding before the Commission. No attorney or law firm will be recognized in any case before the Commission unless the attorney or law firm duly entered their written appearance. When an entry of appearance has been duly filed by a law firm, any attorney member of that firm may appear and be recognized by the Commission. All entries of appearance when filed shall be accompanied by a written authorization signed by the client and attorney identifying the attorney or law firm as the client's representative, as defined in 810:10-1-3, to provide services in the workers' compensation matter, including the presentation of evidence as provided in 85A O.S. § 71(C)(1)(a).

(2) An appearance on behalf of the employer/insurance carrier shall be filed no later than ten (10) days after the employer/insurance carrier's receipt of a file-stamped copy of a claimant's claim for compensation filed pursuant to 810:10-5-2. The entry of appearance for the employer/insurance carrier shall identify whether or not the employer is an active member of a certified workplace medical plan in which the claimant is potentially enrolled, and if so, the name of the plan.

(c) **Leave to withdraw.**

(1) Once an entry of appearance has been filed, Leave to Withdraw can only be had upon written order of the Commission following appropriate notice to the client and the opposing side. Substitution of Counsel may be had by filing with the Commission and serving on the opposing party a notification of the substitution, signed by the attorney of record, the substituted attorney and the client. Notification of the substitution when filed shall be accompanied by a written authorization signed by the client and substituted attorney identifying the attorney as the client's representative to provide services in the workers' compensation matter, including the presentation of evidence as provided in 85A O.S. § 71(C)(1)(a).

(2) Except when an attorney's representation has been terminated at the client's initiative, no attorney shall be allowed to withdraw as an attorney for a party when that attorney has signed the pleadings necessary to perfect an appeal to the Commission en banc. This prohibition shall apply until the appeal has been fully submitted to the Commission en banc for consideration. This prohibition shall not apply if another attorney has entered an appearance for the appealing party before the filing of the application to withdraw.

(d) **Attorney of record.**

(1) The attorney of record for the claimant in a case shall be the attorney signing the first claim for compensation filed in the case for the claimant as provided in 810:10-5-2. Any other attorney who files an entry of appearance on behalf of any party in the case or who is identified as a substitute attorney pursuant to a notice of substitution of attorney shall also be considered an attorney of record. The Commission shall send notices to all attorneys of record until a substitution of attorney has been filed or an Application for Leave to Withdraw has been filed and granted by the Commission. Various attorneys may appear before the Commission in a matter, but notice shall be sent only to those attorneys who are an "attorney of record" as defined in this Subsection.

(2) Attorneys of record who change law firms shall notify the Commission of the status of the representation of

their clients, and shall immediately seek Leave to Withdraw, when appropriate.

810:10-1-11. Designation of agent for service of notice

(a) Each insurance carrier, as defined in 810:10-1-3, shall designate a single agent for service of notice by filing a Designation of Service Agent form with the Commission. A copy of the form may be obtained from the Commission at its main offices, or from the Commission's website.

(b) Once a claim for compensation is filed as provided in 810:10-5-2, if the employer is self-insured or insured by an insurance carrier, the Commission shall send all notices and correspondence to the designated agent, until an entry of appearance is filed as provided in 810:10-1-10. If no agent for service of notice is designated on a Designation of Service Agent form, notices and correspondence shall be sent to the:

(1) signatory on the self-insurance application, if the insurer is an individual own risk employer;

(2) Administrator of the group self-insurance association, if the insurer is a group self-insurance association;

(3) person designated to receive notice of service of process for an insurer as provided in 36 O.S. § 621, if the insurer is a foreign or alien insurance carrier; or

(4) service agent on file with the Oklahoma Secretary of State, if the insurer is a domestic insurance carrier.

(c) If the employer is uninsured or the Commission cannot determine insurance coverage, notice and correspondence shall be sent to the employer at the address supplied by the claimant on the claim for compensation form prescribed in 810:10-5-2. If the notice is returned to the Commission because the claimant has supplied the wrong address for the employer, the Commission shall so inform the claimant. The claimant has the obligation of providing the Commission with the proper address so notices and correspondence can be sent to the employer.

810:10-1-12. Prohibited communications

(a) Ex parte communications by an Administrative Law Judge of the Commission with any party, witness or medical provider are proscribed in 85A O.S. § 105, and may subject the Administrative Law Judge to disqualification from the action or matter upon presentation of an application for disqualification.

(b) Parties, attorneys, mediators, case managers, Commission counselors, Commissioners, vocational rehabilitation evaluators, witnesses and medical providers shall have no ex parte communications with the assigned Administrative Law Judge regarding the merits of a specific matter pending before the judge.

(c) Direct or indirect ex parte communications by a party or their attorney, agent, employees, or anyone else acting on their behalf, with a Commission appointed professional regarding specific cases or claimants are prohibited except as authorized in Paragraph (2) of this Subsection.

(1) For purposes of this Subsection, "Commission appointed professionals" means independent medical examiners, vocational rehabilitation counselors, case managers, and others who have been appointed by the Commission to provide services or treatment to the claimant. The term also includes the office staff of the professional and any physician who accepts a referral from a Commission appointed professional for treatment or evaluation of the claimant when such referral is authorized by the Commission. The term excludes a treating physician selected pursuant to 85A O.S. § 56 regarding change of physician.

(2) The following communications are permitted communications:

(A) Joint letter of the parties requesting information or opinions from the Commission appointed professional after approval by the assigned Administrative Law Judge;

(B) Communication with the staff of a Commission appointed independent medical examiner to schedule or verify an appointment, or to authorize diagnostic testing, treatment or surgery;

(C) Communication with a Commission appointed medical case manager concerning light duty issues consistent with the physician's restrictions;

(D) Any communication between the claimant and the Commission appointed professional necessary to complete the claimant's treatment, testing or evaluation; and

(E) Communication between Commission appointed professionals.

(3) Failure to comply with this Subsection may, in the discretion of the assigned Administrative Law Judge, result in the imposition of costs, a citation for contempt, or sanctions against the offending party.

(4) Instances of prohibited communications with a Commission appointed professional shall be communicated by the Commission appointed professional to the assigned Administrative Law Judge and all parties or counsel, in writing.

810:10-1-13. Time computation

(a) Generally. The time within which an act is to be done, as provided in the AWCA or this Title, shall be computed by excluding the first day and including the last day. If the last day is a legal holiday, it shall be excluded, and performance of that act shall be required on the next regular business day. Time limits related to filing dates shall be computed as provided in this Section from the date of filing as reflected by the date of the file stamp on the document.

(b) Time period of less than eleven days. When the period of time prescribed or allowed is less than eleven (11) days, intermediate legal holidays and any other day when the office of the Clerk of the Commission does not remain open for public business until the regularly scheduled closing time, shall be excluded from the computation.

SUBCHAPTER 3. INFORMAL DISPUTE RESOLUTION PROCESSES

810:10-3-1. Purpose

This Subchapter establishes procedures and standards governing alternative dispute resolution, including mediation, as an informal dispute resolution process for workers' compensation claims and issues, as authorized in 85A O.S. § 70 regarding preliminary conferences, 85A O.S. § 109 regarding the Commission counselor program, and 85A O.S. § 110 regarding alternative dispute resolution and mediation.

810:10-3-2. Policy

The Oklahoma Workers' Compensation Commission is committed to the use of alternative dispute resolution procedures in workers' compensation claims, and all parties to workers' compensation claims are encouraged to voluntarily consider mediation as an alternative to traditional trials for the resolution of their disputes. Such informal procedures can achieve the just, efficient and economical resolution of controversies while preserving the right to a full administrative hearing on demand.

810:10-3-3. Counselor program

(a) The Commission shall maintain a workers' compensation counselor program to assist injured employees, employers and persons claiming death benefits under the AWCA. The program shall be administered by the Counselor Division of the Commission.

(b) A Division counselor shall:

(1) meet with or otherwise provide information to injured employees;

(2) investigate complaints;

(3) communicate with employers, insurance carriers, individual own risk employers, group self-insurance associations, and health care providers on behalf of injured employees;

(4) provide informational seminars and workshops on workers' compensation for medical providers, insurance adjusters, and employee and employer groups; and

(5) develop informational materials for employees, employers and medical providers.

(c) Notice of the availability of the services of the counselor program and of the availability of mediation and other forms of alternative dispute resolution to assist injured workers shall be mailed to the injured worker within ten (10) days of the filing of the Employer's First Notice of Injury as provided in 810:10-1-4. Information about the counselor program and the availability of alternative dispute resolution also shall be made part of the Commission's training materials for self-insurers and claims representatives handling Oklahoma workers' compensation claims.

810:10-3-4. Mediation process, generally

All workers' compensation issues may be mediated except for disputes related to medical care under a certified workplace medical plan or claims against the Multiple Injury Trust Fund. Mediation shall be voluntary, informal, nonbinding (unless the parties enter into a settlement agreement) and strictly confidential. If an agreement is not reached, the results and statements made during the mediation are not admissible in any following proceeding except as provided in 810:10-3-10. Mediation may be by mutual agreement of the parties to a workers' compensation dispute or pursuant to a referral order by the assigned Administrative Law Judge as provided in 85A O.S. § 110(E) following the filing of a request for administrative hearing and assent of the parties to mediate. Parties may waive mediation and proceed directly to an administrative hearing. General information about mediation in workers' compensation may be obtained from the Commission's Counselor Division.

810:10-3-5. Preliminary conferences

(a) At the Commission's discretion the first prehearing conference shall be directed to the preliminary conference docket of a Benefit Review Officer of the Commission. Pursuant to 85A O.S. § 70, the Benefit Review Officer shall:

(1) assist unrepresented claimants to enable those persons to protect their rights in the workers' compensation system;

(2) narrow and define the disputed issues;

(3) facilitate informal dispute resolution and provide an opportunity for a binding settlement of some or all of the issues;

(4) prepare at the conclusion of the preliminary conference stipulations of all contested and uncontested issues which shall be signed by representatives of the parties and the Benefit Review Officer; and

(5) draft a written summary report of the conference within five (5) days after the preliminary conference is closed to be filed in the case.

(b) All unresolved contested issues shall be set by the Commission on the assigned Administrative Law Judge's docket upon the filing of a CC-Form-9 or CC-Form-13.

(c) Benefit Review Officers are authorized to advise unrepresented claimants and to approve Joint Petition Settlements which may result from a preliminary conference; provided, the same Benefit Review Officer who conferred with the claimant may not also approve the Joint Petition Settlement.

(d) A Mediation Conference as provided in this Section may be conducted by agreement of the parties to a workers' compensation dispute or pursuant to a referral order by the assigned Administrative Law Judge following the filing of a request for hearing and assent of the parties to mediate as provided in 85A O.S. § 110. All workers' compensation issues may be mediated except for disputes related to medical care under a certified workplace medical plan or claims against the Multiple Injury Trust Fund.

(e) A Mediation Conference set and conducted as provided in this Section shall be voluntary, informal, nonbinding and strictly confidential. The mediator is authorized to compel attendance at the conference, but is not authorized to compel settlement. Attendance by the parties, and/or a representative of each party having full authority to settle all issues, is required. Failure to attend a Mediation Conference pursuant to this Section without good cause is subject to sanctions for contempt as provided in 85A O.S. § 73(B).

(f) The Mediation Conference may be held in the county where the accident occurred, if the accident occurred in Oklahoma, unless otherwise agreed to by the parties, or as otherwise directed by the Commission. Mediation Conferences involving a nonresident claimant or an accident occurring outside Oklahoma shall be held at the main offices of the Commission in Oklahoma City, Oklahoma, unless otherwise agreed to by the parties, or as otherwise directed by the Commission.

(g) A Mediation Conference may be concluded by any party at any time, by the mediator if in the mediator's discretion it is necessary or an impasse exists, or upon an agreement or settlement being reached by the parties. Whether or not an agreement or settlement is reached, upon conclusion of the conference, the mediator shall complete the Commission prescribed Report of Mediation Conference form and send a copy to each party. The original Report of Mediation shall be filed in the Commission case file, and if there is none, then shall be retained by the Counselor Division.

(h) Except as otherwise provided in Subsections (d) through (g) of this Section, a Mediation Conference conducted by a Commission Benefit Review Officer shall be conducted according to the policies and procedures applicable to mediation conferences of workers' compensation matters by private mediators as provided in 810:10-3-4, 810:10-3-7 through 810:10-3-11.

810:10-3-6. Certified mediators

(a) **Mediator list.** The Commission shall maintain a list of private mediators to serve as certified mediators for the Commission's alternative dispute resolution program. The list shall be placed on the Commission's website at http://www.wcc.ok.gov.

(b) **Qualifications.** To be eligible for appointment by the Commission to the list of certified workers' compensation mediators for a five-year period, the individual must:

(1) be an attorney or non-attorney who has worked in the area of Oklahoma workers' compensation benefits for at least five (5) years; and

(2) otherwise have complied with the requirements of 85A O.S. § 110.

(c) **Application for appointment.** To request appointment to the list of certified workers' compensation mediators, an individual shall:

(1) Submit a signed and completed Commission prescribed Mediator Application form and resume to the following address: Oklahoma Workers' Compensation Commission, Attention: COUNSELOR DIVISION, 1915 North Stiles Avenue, Oklahoma City, Oklahoma 73105. Illegible, incomplete or unsigned applications will not be considered by the Commission and shall be returned. A copy of the Mediator Application form may be obtained from the Commission at the address set forth in this Paragraph, or from the Commission's website at http://www.wcc.ok.gov; and

(2) Verify that the individual, if appointed, will:

(A) schedule a mediation session within thirty (30) days of the order appointing the mediator, unless otherwise agreed to by the parties;

(B) schedule mediation sessions for a minimum two (2) hour block of time, and not schedule more than one mediation session to take place at a time;

(C) submit biennially to the Counselor Division written verification of compliance with the continuing education requirements prescribed by 85A O.S. § 110(H); and

(D) accept as payment in full for services rendered, compensation not exceeding the rate or fee provided in 810:10-3-12.

(d) **Renewal process.**

(1) The Commission shall notify a certified mediator of the end of the mediator's five-year qualification period at least sixty (60) calendar days before the expiration of that period.

(2) Criteria for reappointment is the same criteria as for initial appointment in effect at the time of reappointment.

(e) **Revocation.**

(1) Removal of an individual from the list of certified workers' compensation mediators shall be by request of the mediator or by the Commission after notice and opportunity for hearing.

(2) The Commission may remove a mediator from the list of certified workers' compensation mediators for cause, including, but not limited to the following grounds:

(A) a material misrepresentation in information submitted to apply for appointment to the Commission's list of certified workers' compensation mediators;

(B) refusal or substantial failure to comply with this Section or other applicable Commission rules, and statutes.

(3) Proceedings related to revocation shall be governed by 810:10-5-50 on show cause hearings and the contested hearings rules set forth in Subchapter 5 of this Chapter.

810:10-3-7. Mediation without Commission order of referral

Mediation shall be voluntary and shall not be conducted without the consent of the parties. Parties to a workers' compensation dispute subject to mediation may mutually agree to mediation by a mediator certified by the Commission, to a preliminary conference pursuant to 810:10-3-5, to a Commission mediator pursuant to 85A O.S. § 110(D), or may schedule and proceed with mediation independent of the Commission's processes and with a mediator of their choice. A party may initiate voluntary mediation with a Commission certified mediator by submitting a request for mediation in writing to the Commission's Counselor Division. The Division shall contact the opposing party to ascertain whether or not there is an agreement to mediate. Failure of the opposing party to respond to a request for mediation within fifteen (15) days of notification thereof shall be deemed a refusal to mediate. If mediation is agreed to, the parties shall enter into and submit to the Division a signed, written consent to mediate. If the parties are unable to agree upon a mediator from the Commission's list of certified mediators or elect not to mediate using the preliminary

conference process, the Division shall assign a certified mediator, taking into consideration the availability and location of the certified mediator.

810:10-3-8. Mediation by Commission order of referral

The Commission may order referral to mediation pursuant to an order by the assigned Administrative Law Judge as provided in 85A O.S. § 22(C)(9) and 85A O.S. § 110(E) following the filing of a request for administrative hearing and assent of the parties to mediate.

810:10-3-9. Mediator powers and responsibilities

The mediator:

(1) has a duty to be impartial and to advise all parties of any circumstances bearing on possible bias, prejudice or partiality;

(2) does not have the authority to impose a settlement upon the parties, but shall assist the parties to reach a satisfactory resolution of their dispute;

(3) may direct questions to any of the parties or their respective representatives to supplement or clarify information;

(4) may obtain expert advice concerning technical aspects of a claim, whenever necessary and with the consent of the parties;

(5) may conduct separate meetings known as caucuses with each party, but shall not use these meetings as a time to coerce any party to settle. No information from a caucus may be divulged without permission of the party participating in the caucus; and

(6) immediately following conclusion of mediation proceedings, report the results of the mediation to the Counselor Division on a Report of Mediation Conference form prescribed by the Commission. The report is required for all cases mediated by mutual agreement of the parties or pursuant to Commission order of referral, whether or not the parties reached an agreement.

810:10-3-10. Confidentiality of proceedings; attendance

(a) Mediation sessions are private and shall not be recorded or transcribed in any way. Those in attendance may take notes during the mediation but all notes shall be collected by the mediator at the end of each session and held in a confidential file until the mediation process is completed. When the mediation process is completed, whether or not an agreement is reached, all notes and other writings produced while a mediation is in session, except the written agreement or memorandum of understanding, shall be destroyed.

(b) The parties and one representative for each party may attend mediation sessions. The claimant shall be in attendance, unless all parties agree otherwise. A claimant may participate in mediation without counsel. Other persons may attend only with the consent of all parties and the mediator. Non-parties to the claim shall be advised by the mediator regarding confidentiality and are not allowed to participate in the mediation, but may confer privately with their sponsoring party. All persons attending a mediation session shall respect and maintain the total confidentiality of the session. Attendance at a mediation session shall be in person, except as otherwise authorized in advance by the assigned Administrative Law Judge, if any, or by agreement of the parties and the mediator.

(c) Evidence of statements made and conduct occurring in a mediation conference shall not be subject to discovery and shall be inadmissible in any proceeding in the action or other actions on the same claim. However, no evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed in a mediation conference.

(d) No mediator shall be compelled to testify or produce evidence concerning statements made and conduct occurring in a mediation conference in any civil proceeding for any purpose, except for proceedings of the State Bar Association, disciplinary proceedings of any agency established to enforce standards of conduct for mediators, and proceedings to enforce laws concerning juvenile or elder care.

(e) Statistical information regarding use of mediation in workers' compensation is subject to public disclosure.

810:10-3-11. Concluding mediation

During the mediation conference, the parties may agree to resolve a particular issue, settle the entire claim or conclude the mediation without reaching an agreement or settlement. A mediation conference may be concluded by any party at any time, by the mediator if in the mediator's discretion it is necessary or an impasse exists, or upon an agreement being reached by the parties. If an agreement is reached, the agreement shall be reduced to writing by the mediator, then read and signed by the parties and their counsel, if any, and the mediator. If the agreement requires a Commission order, the order must be presented for approval. Whether or not the parties reached an agreement or mediated by mutual agreement or pursuant to Commission order of referral, the mediator shall report the results of the mediation as provided in 810:10-3-9.

810:10-3-12. Mediator fees

(a) A mediator certified by the Commission as provided in 810:10-3-6 shall be entitled to a fee that does not exceed One Hundred Dollars ($100.00) per hour, or portion thereof, for mediation conferences, not to exceed a total fee of Eight Hundred Dollars ($800.00) for any mediation conference, even though the conference may recess and reconvene subsequently on one or more dates. The employer or insurance carrier shall pay the mediator Two Hundred Dollars ($200.00) on or before the initial mediation session. This payment shall be applied against the Eight Hundred Dollars ($800.00) owed for the mediation conference. If the mediation is concluded at the initial mediation session, the mediator shall bill the employer or insurance carrier the remaining balance of the total fee. If the mediation conference is recessed and reconvened by the mediator, the respondent shall pay the remaining balance to the mediator on or before the first reconvened date. The mediator shall disclose the mediator's fees to the parties when scheduling the initial

mediation session. Mediators shall be entitled to reimbursement for mileage and necessary lodging expenses, limited to the provisions of the State Travel Reimbursement Act, 74 O.S. §§ 500.1, et. seq. These reimbursements shall be in addition to the fees set forth in this Subsection.

(b) Nothing in this Section shall prohibit a certified mediator from charging a flat fee for a mediation conference, subject to the limits specified in this Section.

SUBCHAPTER 5. HEARINGS CONDUCTED BY ADMINISTRATIVE LAW JUDGES AND COMMISSIONERS

PART 1. COMMENCEMENT OF CLAIMS AND REVIEW OF QUALIFIED EMPLOYER BENEFIT DETERMINATIONS

810:10-5-1. Purpose

This Subchapter establishes procedures and standards governing the commencement of claims for disposition by the Oklahoma Workers' Compensation Commission as provided in the AWCA.

810:10-5-2. Claim for compensation

(a) A claim for compensation for benefits for an injury, including a cumulative trauma injury and death, or occupational disease or illness, occurring on or after February 1, 2014, shall be commenced by filing, in quadruplicate, an executed notice form with the Commission that includes the employer's Federal Employer Identification Number and the worker's full name and date of birth, and the last four digits of the worker's Social Security number. The following forms shall be used, as appropriate:

(1) CC-Form-3 claim for compensation for benefits for a single event or cumulative trauma injury;

(2) CC-Form-3A claim for compensation for death benefits; and

(3) CC-Form-3B claim for compensation for occupational disease or illness benefits.

(b) A proceeding under 810:15-15-3 to address payment of disputed fees for health services (e.g. physician fees, hospital costs, etc.), vocational rehabilitation or medical case management, shall be commenced by filing an MFDR Form 19. A CC-Form-9 shall be filed to request a hearing on an MFDR Form 19 dispute.

(c) Within ten (10) days of the filing of a claim for compensation (i.e. CC-Form-3, CC-Form-3A or CC-Form-3B), the Commission shall mail or send electronically a copy of the claim form bearing the assigned file number to the service agent designated by the self-insured employer, group self-insurance association, or insurance carrier , or as otherwise directed in that Section.

810:10-5-3. Claim against the Multiple Injury Trust Fund

(a) A claim against the State Treasurer as custodian of the Multiple Injury Trust Fund shall be commenced by filing an executed CC-Form-3F. The CC-Form-3F shall list each of the claimant's prior adjudicated claims, the date of each injury, the file number and the percentage of permanent partial disability awarded for each injury. If the claimant claims a pre-existing obvious and apparent disability, the disability shall be fully described on the CC-Form-3F, but no percentage of impairment need be included. A CC-Form- 9 shall be filed to request a hearing. Upon filing the CC-Form-9, the claimant or the claimant's attorney, if any, shall mail a copy thereof to the Multiple Injury Trust Fund.

(b) The CC-Form-3F filed with the Commission shall be served on the State Treasurer and the Multiple Injury Trust Fund and shall have a certificate of service setting forth the manner of such service as required by 810:10-1-7.

(c) A notation on the CC-Form-3 or CC-Form-3B that the claimant is a previously impaired person shall not be deemed to commence a claim against the Multiple Injury Trust Fund. The CC-Form-3F must be filed in the claim in which benefits are sought and shall use that same Commission file number.

(d) All requests by the Multiple Injury Trust Fund for the appointment of an independent medical examiner shall be governed by 85A O.S. § 112 and 810:10-5-45.

810:10-5-4. Claim for death benefits

(a) Death claims must be filed by the personal representative of the deceased employee's estate if probate proceedings have begun. If no probate proceeding has been brought, a death claim may be filed by the surviving spouse, or where there is no such spouse, then by the next of kin of the deceased employee. If the latter is incompetent or a minor, the guardian of such person shall be the proper party-claimant.

(b) All persons who have or may assert a claim for death benefits shall be named in the claim and their addresses and relationship to the deceased shall be given.

(c) If there are any beneficiaries named in the claim whose current whereabouts are not known, notice to such persons shall be obtained by publication in the county in which the decedent last resided, and the county of the last known address of any such beneficiary. Publication shall be for one time per week for three (3) successive weeks.

810:10-5-5. Review of adverse benefit determination by qualified employers

(a) Except as otherwise provided by law, a claimant aggrieved by all or part of an adverse benefit determination upheld by a qualified employer's appeals committee pursuant to 85A O.S. § 211, may appeal the determination to the Commission en banc by filing an original and four (4) copies of a Commission prescribed CC-Form-211 Request for Review of Adverse Benefit Determination with the Commission within one (1) year after the claimant's receipt of notice that the determination, or part thereof, was upheld. The CC-Form-211 shall:

(1) include a copy of the adverse benefit determination being appealed to the Commission en banc; and

(2) clearly and concisely address each issue in the adverse benefit determination that the claimant wants reviewed, and state the relief sought. General allegations of error do not suffice. Allegations of error concerning matters not included in a timely filed CC-Form-211 shall be deemed waived.

(b) The Commission shall assign a file number to the CC-Form-211 upon receipt, and, within ten (10) days thereafter, shall mail or send an electronic copy thereof to the qualified employer.

(c) Proceedings related to oral argument before the Commission en banc and submission by the parties of written arguments as an aid to the Commission en banc shall be governed by 810:10-5-66(c)-(f). The qualified employer's written argument shall be accompanied by an appendix that includes a copy of the employer's benefit plan and the entire administrative record established by the internal process of the qualified employer's plan.

(d) Discovery related to a claim for review under this section shall be governed by Rule 810:10-5-31(c)-(d).

810:10-5-6. Commission relief regarding agreements to arbitrate

(a) An application for judicial relief involving an arbitration matter under the Workers' Compensation Arbitration Act, 85 A O.S. § 300, et seq., shall be made to the Commission by the filing of a CC-Form-300 Request for Proceeding Regarding Arbitration Agreement.

(b) The CC-Form-300 shall be served in the manner provided by law for the service of a summons in the filing of a civil action and shall have a certificate of service setting forth the manner of such service as required by 810:10-1-7.

810:10-5-7. Claim for discrimination or retaliation

(a) A claim for discrimination or retaliation as prescribed by 85A O.S. § 7 shall be commenced by filing an executed Commission prescribed CC-Form-3C Claim for Discrimination or Retaliation with the Commission. The CC-Form-3C shall be filed in the underlying workers' compensation claim filed pursuant to the Workers' Compensation Act and shall use that same Commission file number.

(b) The CC-Form-3C filed with the Commission shall be served on the respondent and shall have a certificate of service setting forth the manner of such service as required by 810:10-1-7.

(c) A CC-Form-9 must be filed to request a hearing. Upon filing the CC-Form-9, the claimant or the claimant's attorney, if any, shall mail a copy thereof to the respondent.

PART 3. SUBSEQUENT PLEADINGS

810:10-5-15. Response to initial pleading; notice of contested issues

(a) An employer or its insurance carrier may respond to any issue related to a claim and liability therefor, including a claim for compensation, a claim for payment of health care or rehabilitation expenses, or a claim against the Multiple Injury Trust Fund for combined disabilities, by timely filing a CC-Form-10 Answer and Notice of Contested Issues or an MFDR Form 10M, pursuant to 810:10-5-16 or 810:15-15-3, as appropriate.

(b) A general denial or failure to timely file a CC-Form-10 or MFDR Form 10M shall be taken as admitting all allegations in the claim form except jurisdictional issues; and

(1) the extent, if any, of the claimant's disability, for a CC-Form-3 or CC-Form-3B claim; or

(2) the amount due, if any, for a death claim.

(c) Unless excused by the Commission for good cause shown, denials and affirmative defenses shall be asserted on the CC-Form-10 or MFDR Form 10M, or shall be waived. No reply to the CC-Form-10 or MFDR Form 10M is required.

810:10-5-16. Request for administrative hearing and pretrial stipulations

(a) Any party may request an administrative hearing before the Commission on any issue by filing a CC-Form-9 Request for Hearing. As provided in 85A O.S. § 71(B)(2), the request for hearing shall clearly set forth the specific issues of fact or law in controversy and the contentions of the party applying for the hearing.

(b) When a CC-Form-9 is filed on the issues of permanent partial disability or permanent total disability, the claimant shall deliver a medical report to the opposing party. The name of the physician and the date of the report shall be noted on the CC-Form-9. No CC-Form-9 may be filed less than ten (10) days from the date the claimant has filed a claim for compensation as provided in 810:10-5-2 or 810:10-5-3.

(c) Objections to termination of temporary compensation made pursuant to 85A O.S. § 45(A)(2), and requests for temporary compensation or medical treatment, shall be set by the Commission on the assigned Administrative Law Judge's prehearing conference docket for expedited hearing, prior to being docketed for an administrative hearing, unless otherwise directed by the assigned judge. At the time of the prehearing conference, all parties, to the best of their ability, shall advise the Commission and all parties of the number of witnesses expected to be called at the administrative hearing.

(d) The procedure to request an administrative hearing for the termination of temporary compensation is governed by 810:10-1-6.

(e) In all cases, the employer or insurance carrier shall file a CC-Form-10 Answer and Notice of Contested Issues or MFDR Form 10M no later than thirty (30) days after the filing of the CC-Form-9. The CC-Form-10 or MFDR Form 10M may be amended at any time, not later than twenty (20) days before the date of the administrative hearing.

(f) Both the CC-Form-9, and the CC-Form-10 or MFDR Form 10M, shall list the names of all witnesses, including any expert witnesses, which the party intends to call at the time of the administrative hearing. Absent waiver by the opposing

party, failure without good cause to comply with this Subsection may, in the discretion of the hearing officer or the Commission, result in a witness not listed being prohibited from testifying, or in the exclusion of the evidence if submitted at the administrative hearing.

(g) Except as otherwise provided in Subsection (h) of this Section, no later than twenty (20) days before the date of the administrative hearing, all parties shall exchange all documentary evidence, exhibits and a complete list of witnesses with all opposing parties.

(h) As provided in 85A O.S. § 72(C), any party proposing to introduce a medical report or testimony of a physician at the hearing on a controverted claim, shall furnish a copy of the written report of the physician's findings and opinions to the opposing party and to the Commission no later than seven (7) days before the date of the hearing. If no written report is available to a party, that party shall notify the opposing party and the Commission in writing of the name and address of the physician proposed to be used as a witness and the substance of the physician's testimony no later than seven (7) days before the date of the administrative hearing. Cross-examination of the physician is governed by 85A O.S. § 72(C)(2)(b).

(i) The time periods specified in Subsections (g) and (h) of this Section may be waived by agreement of the parties.

(j) Absent waiver by the opposing party, failure without good cause to comply with Subsections (g) or (h) of this Section, may, in the discretion of the hearing officer or the Commission, result in exclusion of the evidence if submitted at the administrative hearing.

810:10-5-17. Joinder and consolidation of proceedings

(a) **Joinder.**

(1) A claimant who desires to add additional employers and/or insurance carriers, shall promptly amend the claim for compensation (CC-Form-3, CC-Form-3A, or CC-Form-3B) and mail a copy of the amended claim form to all parties, including the additional employers and/or insurance carriers named. Mailing shall constitute service upon the additional parties.

(2) An employer or insurance carrier that desires to add additional employers and/or insurance carriers shall file a CC-Form-13 Request for Prehearing Conference on the issue, and mail a copy of the CC-Form-13 to all parties, including the additional employers and insurance carriers named. The Commission shall notify all parties of the date of the prehearing conference. At the prehearing conference, the Commission shall hear argument, and based upon its discretion, enter its order granting or denying the request.

(3) The additional employers and insurance carriers shall comply with 810:10-5-15.

(4) The Commission, in its discretion, may impose an appropriate sanction prescribed in 85A O.S. § 83(B) against a party or the party's attorney who, without good cause shown, frivolously joins another party.

(b) **Consolidation of proceedings.**

(1) **Consolidation to afford the parties a joint hearing stage.** Consolidation of multiple cases involving the same claimant may be made for hearing purposes only at the discretion of the Administrative Law Judge assigned to the lowest case number, upon request of either party. Cases consolidated for purposes of hearing only shall maintain individual case numbers and shall remain subject to separate filing fees prescribed in 85A O.S. § 118 and costs.

(2) **Consolidation of cases involving the same claim.** Cases involving the same claim shall be consolidated to the lowest case number.

(3) **Prehearing conference on consolidation request.** All motions and requests to consolidate shall be set for prehearing conference before the entry of a Commission order sustaining or overruling the motion for case consolidation.

810:10-5-18. Continuances

(a) A request for a continuance will not be granted as a matter of course. Any motion for a continuance may be granted only by the assigned Administrative Law Judge for good cause shown. All motions for continuance shall be signed by the party on whose behalf the motion is made.

(b) No continuance of an appeal scheduled for review by the Commission en banc is permitted before the date of an oral argument authorized as provided in 810:10-5-66 without approval of the Commission Chair, or in the absence of the Commission Chair, the Commission Vice Chair. Continuances requested on the date of the oral argument will be granted only upon a majority vote of the Commission en banc.

810:10-5-19. Pauper status

(a) A party may proceed without payment of fees and costs required under the AWCA or this Title upon a determination by the Commission or an Administrative Law Judge of the individual's pauper status. Any party making application to proceed as a pauper shall complete and file a CC-Form-99 with the Commission and serve a copy thereof on all other parties in the proceeding. The CC-Form-99 shall be prescribed by the Commission.

(b) The CC-Form-99 shall be set for prehearing conference before the assigned Administrative Law Judge before any hearing on the merits, with notice to all other parties in the proceeding. If filed at the time an appeal on an underlying issue is filed with the Commission en banc, the CC-Form-99 shall be addressed by the assigned Administrative Law Judge before the appeal is docketed for hearing.

(1) If the Administrative Law Judge denies the request for pauper status, the applicant may appeal the denial order to the Commission en banc within ten (10) days of its issuance as reflected by the file-stamped date on the order. The appeal to the Commission en banc shall be set on a priority basis. Payment of the cost of the appeal, including transcript costs and the filing fee, will be deferred pending resolution of the appeal.

(2) If the Commission en banc affirms the denial of pauper status, the applicant must either pay all of the deferred costs of the appeal or seek review of the Commission en banc's order by appealing it to the Supreme Court within twenty (20) days of when the Commission en banc's order was sent. Failure to do either shall result in dismissal of the underlying appeal to the Commission en banc upon motion of the opposing party. Only one appeal fee is due because the pauper status appeal is part of the original, underlying appeal.

(3) If pauper status is found by the Commission en banc, the deferred costs and fees shall be borne by the Commission, and the underlying appeal will be docketed for hearing.

PART 5. PREHEARING PROCEEDINGS

810:10-5-30. Prehearing conference

(a) Any party shall have the right to request a prehearing conference before the Commission on any issue by filing a CC-Form-13 Request for Prehearing Conference. The requesting party must certify on the request that the parties have conferred or attempted to confer in good faith, but have reached an impasse and are unable to resolve the issue.

(b) Except as otherwise provided in 810:10-3-5, the purpose of the prehearing conference is to permit an informal hearing between the parties and the Administrative Law Judge in an effort to resolve the case or issues in the case before an administrative hearing, and to discuss the facts, identify the legal issues, present discovery requests, make all appropriate stipulations, and discuss such other matters as may facilitate consideration of the case.

(c) The Administrative Law Judge shall set the matter for prehearing conference on the Administrative Law Judge's docket or a Benefit Review Officer's docket, as appropriate, at the earliest available time after the filing of the CC-Form-13. Notice of the date, time and place of the prehearing conference shall be provided by the Commission to all parties or their attorneys of record.

(d) Nothing in this Section shall limit a party's right to request a conference with the assigned Administrative Law Judge at the time of the administrative hearing.

(e) The Commission, in its discretion, may order the appearance of any party or attorney at any prehearing conference or conference requested with the Administrative Law Judge at the time of the administrative hearing. Nothing in this Section shall limit the authority of an Administrative Law Judge to order a prehearing conference or conference at the time of the administrative hearing.

(f) The Commission may, in its discretion, impose an appropriate sanction prescribed in 85A O.S. § 83(B) against an offending party for failure to appear at a conference, appearance at a conference substantially unprepared, failure to participate in the conference in good faith, or for seeking the conference in an effort to delay, harass or increase costs.

810:10-5-31. Discovery

(a) **Generally.** Discovery in administrative proceedings before the Commission is governed by this Section.

(b) **Authority of the Administrative Law Judge.** Any party may commence with discovery methods such as depositions, issuance of subpoenas and requests for production, prior to or after invoking the jurisdiction of the Administrative Law Judge. Discovery disputes may be resolved by filing a request for hearing. Administrative Law Judge, upon the judge's own motion or on the motion of either party, may permit or perform such discovery or other appropriate action as the judge decides is appropriate in the circumstances, taking into account the needs of the parties to the proceeding and other affected persons and the desirability of making the proceeding fair, expeditious, and cost-effective. If discovery is permitted or performed, the Administrative Law Judge may order a party to the proceeding to comply with the judge's discovery-related orders, issue subpoenas for the attendance of a witness and for the production of records and other evidence at a discovery proceeding, including a deposition, and take action against a noncomplying party as appropriate and consistent with 85A O.S. § 73(B) and 85A O.S. § 83(B).

(c) **Protective orders.** The Commission may issue a protective order to prevent the disclosure of privileged information, confidential information, trade secrets, and other information protected from disclosure to the extent a court could if the controversy were the subject of a civil action in this state, including any orders with respect to subpoenas and attendance of a witness as may be appropriate for the protection of persons, including an order quashing a subpoena, excusing attendance of witnesses, or limiting documents to be produced.

(d) **Subpoenas; costs; fees; service.** When a witness is required to appear or to produce documentary evidence, a subpoena shall be issued by an attorney authorized to practice law in Oklahoma or under the seal of the Clerk of the Commission. The party requesting the subpoena underthe seal of the Commission shall fill it in before issuance. The subpoena may be served by certified mail with return receipt requested or it may be hand delivered. The party requesting the subpoena shall bear the cost of serving it. Except as otherwise provided by law or this Title for physician testimony, fees of a nonparty witness who is subpoenaed to appear before the Commission shall be the same as those allowed to witnesses appearing before the district courts of this state. Party witnesses are not entitled to witness fees.

(e) **Completion of discovery by the employer or insurance carrier in contested claims.** Pursuant to 85A O.S. § 111, if the compensability of a claim is contested, the employer or insurance carrier shall complete and secure a medical evaluation of the claimant within sixty (60) days of the filing of a claim for compensation pursuant to 810:10-5-2.

(f) **Filing Discovery.** No depositions, interrogatories, interrogatory answers, requests for production of documents and things, requests for admissions, or responses thereto, shall be filed with the Commission, except as ordered by the assigned Administrative Law Judge.

PART 7. INITIAL AND SUBSEQUENT PROCEEDINGS

810:10-5-45. Submission to medical examination; appointment of medical or vocational expert; travel expenses

(a) **Submission to medical examination.** Upon reasonable advance notice from the employer or insurance carrier, the employee must submit to a medical examination by a physician selected by the employer or insurance carrier. If the claimant refuses to submit to the examination, the employer or insurance carrier may file a CC-Form-13 requesting the claimant's compensation and right to prosecute any proceeding under the AWCA be suspended during the period of refusal as provided in 85A O.S. § 50(E). The claimant must show cause at the hearing why the request of the employer or insurance carrier should not be granted.

(b) **Appointment of medical or vocational expert.** Appointment of an independent medical examiner is governed by 810:15-9-4. Appointment of a medical case manager is governed by 810:15-11-4. Appointment of a vocational rehabilitation provider is governed by 810:20-1-4.

(c) **Travel expenses.** The employer or insurance carrier shall reimburse the employee for the actual mileage in excess of twenty (20) miles round-trip to and from the claimant's home to the location of a medical service provider for all reasonable and necessary medical treatment, for vocational rehabilitation or retraining, for an evaluation by an independent medical examiner and for any evaluation, including an evaluation for vocational rehabilitation or vocational retraining, made at the respondent's request, but in no event in excess of six hundred (600) miles round-trip. Mileage and necessary lodging expenses are limited to the provisions of the State Travel Reimbursement Act, 74 O.S. §§ 500.1, et. seq. Meals will be reimbursed at a per diem rate of Fifteen Dollars ($15.00) per meal per four hours of travel status, not to exceed three meals per day.

810:10-5-46. Evaluation of permanent impairment

(a) **Generally.** Except for scheduled losses subject to 85A O.S. § 46(A) and as otherwise provided in this Section, evaluations of permanent impairment for injuries occurring on or after February 1, 2014, must be based solely on criteria established by the current edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment as a proportionate loss of use of the body as a whole, using the conversion tables of the guides. Deviations from the Guides are permitted only when specifically provided for in the Guides, or pursuant to an alternative method of evaluation approved pursuant to 85A O.S. § 60 that deviates from or is used in place of or in combination with the Guides.

(b) **Change of condition.** Evaluations of permanent impairment which are prepared in support of a Motion of Change of Condition occurring on or after February 1, 2014 shall be performed using the appropriate edition of the AMA Guides, including any approved alternative method of evaluation developed as provided in 85A O.S. § 60 that deviates from or is used in place of or in combination with the Guides, in effect on the date of injury.

(c) **Hearing impairment.** The current edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment, or any alternative method approved pursuant to 85A O.S. § 60 that deviates from or is used in place of or in combination with the Guides, in effect on the date of injury, shall be used to evaluate permanent impairment caused by hearing loss where the last exposure occurred on or after February 1, 2014. Objective findings necessary to prove permanent disability in occupational hearing loss cases may be established by medically recognized and accepted clinical diagnostic methodologies, including, but not limited to audiological tests that measure air and bone conduction thresholds and speech discrimination ability. Differences in baseline hearing levels shall be confirmed by subsequent testing given within four (4) weeks of the initial baseline hearing level test.

(d) **Eye impairment.**

(1) The criteria for measuring and calculating the percentage of eye impairment for an injury occurring on or after February 1, 2014 shall be pursuant to this Subsection. A physician may deviate from the method of evaluation provided for in this Subsection or may use some other recognized method of evaluation, if the deviation or the method of evaluation is fully explained.

(2) Physicians should consult the American Medical Association's Guides to the Evaluation of Permanent Impairment regarding the equipment necessary to test eye function and for methods of evaluating vision loss. Evaluation of visual impairment may be based upon visual acuity for distance and near, visual fields and ocular motility with absence of diplopia.

(3) Use of corrective lenses may be considered in evaluating the extent of vision loss, 85A O.S. § 46(E).

810:10-5-47. Attorney fee disputes

(a) Under 85A O.S. § 82, in a controverted claim under the AWCA when the employer or insurance carrier has contested liability in whole or in part, the attorney for the employee or a dependent in whose favor the proceeding has been finally decided, is entitled to an award of attorney fees, subject to limitations in the AWCA.

(b) When a dispute arises among several attorneys as to the identity of claimant's attorney of record, or when several successive attorneys lay claim to a fee in the same case, the Administrative Law Judge shall decide the issues raised and allocate the fee allowed in proportion to the services rendered.

(c) Nothing in this Section precludes resolution of an attorney fee dispute by mediation or agreement of the parties, as appropriate.

810:10-5-48. Sessions, hearings and venue, generally

(a) **Open to the public.** Hearings of the Commission or any Administrative Law Judge on matters filed with the Commission for disposition will be open to the public. As allowed in 85A O.S. § 19(D), the Commission or any Commissioner may hold hearings in any city of this state. Consistent with 85A O.S.

§ 71(B)(4), hearings before an Administrative Law Judge shall be held at the Commission's main offices in Oklahoma City, Oklahoma, or at a designated location in Tulsa, Oklahoma, as determined by the Commission.

(b) **Time.** All hearings shall commence at the time designated in the notice of hearing or by order of the Commission.

(c) **Conduct before the Commission.** Conduct of attorneys before the Commission shall be governed by applicable rules of the Supreme Court of Oklahoma. All parties, witnesses, and observers will at all times maintain decorum, and will conduct themselves in such manner as to reflect respect for the authority and dignity of the Commission and its Administrative Law Judges. Upon violation of this provision, any person or party attending any proceeding before the Commission may be subject to sanctions for contempt as provided in 85A O.S. § 73(B).

(d) **Record of hearing.** Hearings before the Commission or an Administrative Law Judge shall be stenographically recorded by a Commission reporter. The Commission may contract for court reporter services. A transcript of proceedings will be made by a court reporter at the request and expense of the person ordering it, or at the request of the Commission, in which case, a copy will be made for any person requesting it, at that person's expense.

810:10-5-49. Rules of evidence

(a) **Generally.** The Commission and Administrative Law Judges and are not bound by technical or statutory rules of evidence or procedure, 85A O.S. § 72(A).

(b) **Presentation of evidence.** At the hearing, an opportunity shall be afforded all parties to present evidence and argument with respect to matters and issues involved, although the argument may be restricted to a presentation in written form, to cross-examine witnesses who testify, and to submit rebuttal evidence. During a hearing, irrelevant, immaterial, or unduly repetitious evidence shall be excluded.

(c) **Taking official notice.** The Administrative Law Judge may take official notice of the law of Oklahoma and other jurisdictions, facts that are judicially cognizable, and generally recognized facts within the Commission's specialized knowledge; provided all parties shall be notified either before or during the hearing of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed.

(d) **Documents.**

(1) A photographic copy of a document which is on file as part of the official records of the Commission will be received without further authentication.

(2) A photographic copy of a public record certified by the official custodian thereof will be received without further authentication. A written statement by such custodian of records that no record or entry of described character is found in his records shall be received as proof of absence of such record.

(3) A photographic copy of a document may be substituted for the original at the time the original is offered in evidence.

(4) A document may not be incorporated in the record by reference except by permission of the Commission or Administrative Law Judge. Any document so received must be precisely identified.

(5) The Commission or Administrative Law Judge may require that additional copies of exhibits be furnished for use by other parties of record.

(6) When evidence is offered which is contained in a book or document containing material not offered, the person offering the same shall extract or clearly identify the portion offered.

(7) The Commission or Administrative Law Judge may permit a party of record to offer a document as part of the record within a designated time after conclusion of the hearing.

(e) **Witnesses.** All witnesses who appear to testify during a hearing shall first be subject to oath or affirmation and any testimony submitted by deposition shall show on the face thereof that the witness was so qualified.

(f) **Prepared testimony.** Except as otherwise provided in Subsection (g) and (h) of this Section, written testimony of a witness in the form of a notarized affidavit may be received in lieu of direct examination.

(g) **Expert medical testimony.**

(1) Expert medical testimony may be offered by:

(A) a written medical report of the physician;

(B) deposition; or

(C) oral examination before the Commission or Administrative Law Judge.

(2) Medical opinions addressing compensability and permanent disability must be stated within a reasonable degree of medical certainty. Medical opinions concerning the existence or extent of permanent disability must be supported by competent medical testimony of a physician described in 85A O.S. § 45(C)(1) and shall be supported by objective findings as described in 85A O.S. § 2(31). The medical testimony must include the employee's percentage of permanent partial disability and whether or not the disability is job-related and caused by the accidental injury or occupational disease or illness.

(3) The fact that the medical report constitutes hearsay shall not be grounds for its exclusion; provided, objection to and request for cross-examination of a Commission appointed independent medical examiner is governed by 85A O.S. § 112(J).

(h) **Vocational rehabilitation and case management evidence.**

(1) Testimony of a vocational rehabilitation expert or medical case manager may be offered by:

(A) a written report of the vocational rehabilitation expert or medical case manager, as appropriate;

(B) deposition; or

(C) oral examination before the Commission or Administrative Law Judge.

(2) The fact that the report constitutes hearsay shall not be grounds for its exclusion.

(i) **Exhibits.** All exhibits shall be identified by the case style and Commission assigned file number before being submitted.

810:10-5-50. Setting of matters

(a) **General.** All contested hearings to decide the rights of interested persons under the AWCA shall be set before an Administrative Law Judge, except as otherwise provided by law or this Title.

(b) **Exceptions.** The Commission en banc shall hear appeals of decisions from Administrative Law Judges, 85A O.S. § 78, and review adverse benefit determinations made pursuant to 85A O.S. § 211 of the Oklahoma Injured Employee Benefit Act, 85A O.S. § 200.

(c) **Show cause hearings.** When a Commission Division contests a permit or license holder's compliance with state workers' compensation laws or Commission rules, the Division may cause notice to be issued to the permit or license holder to appear before an Administrative Law Judge or an administrative hearing officer designated by the Commission to show why the holder's permit or license should not be cancelled or revoked. The notice shall contain a date certain for the hearing. Failure to appear at the hearing may result in the cancellation or revocation of the permit or license. Appearances at the hearing are governed by 810:10-1-9. The permit or license holder is to bring all reports and payments for delinquent assessments or other documentation pertinent to the hearing to the show cause hearing. Evidence and witnesses may be presented at the hearing.

810:10-5-51. Assignment of Administrative Law Judge; notice of hearing

(a) The Commission shall assign a claim for compensation filed pursuant to 810:10-5-2 to an Administrative Law Judge who shall hold a hearing upon the request of an interested party or on the judge's own motion.

(b) If a hearing is ordered, at least ten (10) days' notice of the hearing shall be served on the claimant and other interested parties, personally or by mail as prescribed in 85A O.S. § 71(B)(4). The date, time and location of the hearing shall be specified in the notice. The hearing shall be held in Oklahoma City, Oklahoma or Tulsa, Oklahoma, as provided in 810:10-5-48. Objections to venue shall be filed and submitted to the assigned Administrative Law Judge within seven (7) days of receipt of the first hearing docket notice.

810:10-5-52. Disqualification of assigned Administrative Law Judge

(a) Any party who feels that a fair and impartial administrative hearing or other hearing cannot be received from the Administrative Law Judge to whom the matter is assigned, shall make written motion requesting the judge to withdraw from the case. That application shall set forth specific reasons constituting good cause for the motion. The Administrative Law Judge may withdraw by written order without further proceeding and immediately refer the matter to the Executive Director for reassignment.

(b) Any party aggrieved by an order of an Administrative Law Judge who refused to grant a written request to disqualify, or transfer a claim to the Executive Director for reassignment, may seek corrective relief by invoking the jurisdiction of the Commission en banc in the manner and within the time provided by 85A O.S. § 78, with appeal possible thereafter to the Oklahoma Supreme Court if the relief sought by the petitioner was denied by the Commission en banc.

(c) An order of the assigned Administrative Law Judge or the Commission en banc which is favorable to the moving party may not be reviewed in any tribunal either by appeal or in any other procedural framework.

810:10-5-53. Hearings

(a) All hearings shall be conducted in a fair, impartial and expeditious manner. Administrative Law Judges shall hear claims sitting without a jury, 85A O.S. § 27(A).

(b) Every Administrative Law Judge appointed by the Commission shall have the power to:

(1) refer a matter to mediation as provided in 85A O.S. § 110 and Subchapter 3 of this Chapter;

(2) administer oaths and affirmations;

(3) regulate the course of the hearing;

(4) facilitate discovery as provided in 810:10-5-31;

(5) receive written stipulations and agreements of the parties;

(6) rule on the admissibility of evidence and objections thereto;

(7) determine the relevancy, materiality, weight and credibility of evidence;

(8) hold conferences for settlement or simplification of the issues;

(9) dispose of procedural requests, motions, or similar matters, and objections thereto;

(10) issue orders, including interlocutory orders for the proper and expeditious handling of the case;

(11) grant further hearings per 85A O.S. § 72(C) for the purpose of introducing additional evidence; and

(12) take such other action as authorized by law or this Section, or as may facilitate the orderly conduct and disposition of the hearing.

(c) Submission of evidence. Submission of evidence is addressed in 810:10-5-49.

(d) Written arguments. The Commission or Administrative Law Judge may require or allow the parties of record to submit written arguments and legal authority for their respective positions as an aid to the Commission or judge, and may designate the order and time for doing so and for replying to the submission.

(e) Closing the record. The record shall be closed when all parties of record have had an opportunity to be heard and to present evidence, and the Commission or Administrative Law Judge announces that the record of testimony and exhibits is closed.

810:10-5-54. Judgment or award of the Administrative Law Judge

The Administrative Law Judge shall issue written findings of fact and conclusions of law within thirty (30) days of submission of the case by the parties. The order shall be signed by the judge and include a certificate of service to all parties and

attorneys of record. The order shall be filed with the Clerk of the Commission.

PART 9. POST ORDER RELIEF

810:10-5-66. Appeal of Commission Administrative Law Judge order

(a) **Request for Review.** Any party aggrieved by a judgment or award of an Administrative Law Judge, which party for purposes of this Section shall be known as the "appellant", may appeal the order to the Commission en banc by filing an original and two (2) copies of a Request for Review with the Commission within ten (10) days of when the order was issued as reflected by the file-stamped date on the order. The Request for Review shall:

(1) be in writing;

(2) include a copy of the order being appealed;

(3) clearly and concisely rebut each issue in the Administrative Law Judge's order that the appellant wants reviewed, and state the relief sought. General allegations of error do not suffice. Allegations of error concerning matters not included in a timely filed Request for Review shall be deemed waived;

(4) be served on all other parties of record, which for purposes of this Section shall be known as the "respondents";

(5) have a certificate of service setting forth the manner of such service as required by 810:10-1-7;

(6) be accompanied by a designation of record filed by the appealing party and a copy submitted to the Commission reporter and all parties in the case concurrently with or before filing a Request for Review; and

(7) be accompanied by a non-refundable filing fee in the sum of One Hundred Seventy-five Dollars ($175.00) pursuant to 85A O.S. § 78(B).

(b) **Timeliness of filings.** The timeliness of the filing of a Request for Review is governed by 810:10-1-13. Untimely Requests for Review do not invoke the jurisdiction of the Commission en banc and will not be reviewed by the Commission en banc.

(c) **Oral argument.** Oral argument before the Commission en banc shall be limited to ten (10) minutes per side, unless the time is enlarged by leave of the Commission en banc. Any party failing to appear when the appeal is called for oral argument shall be deemed to have waived the right to argue the case and the appeal shall be considered as submitted on the record.

(d) **Written argument.** In any case pending on a Request for Review, the parties of record shall submit written arguments, including a statement of facts and legal authority for their respective positions, as an aid to the Commission en banc. The written argument shall not exceed five (5) pages in length, and shall be double spaced and prepared in at least ten point font size on 8 $\frac{1}{2}$" x 11" paper with one inch margins. No appendix or other documents shall be attached to the written argument. The appellant has twenty (20) days after the filing of the Request for Review within which to file an original and four (4) copies of the written argument with the Commission, with a copy served on all opposing parties. The opposing parties shall have ten (10) days within which to submit a response. When submitted, the original and four (4) copies of the response shall be filed with the Commission and a copy served on the appellant.

(e) **Dismissal for failure to file.** An appeal may be dismissed with prejudice by the Commission's Presiding Appellate Officer when appellant has failed to timely file the written argument and has failed to timely respond to the Commission's order to file the required written argument.

(f) **Default judgment for failure to file.** Default judgment may be entered by the Commission's Presiding Appellate Officer against the opposing parties when opposing parties have failed to timely file the written response and have failed to timely respond to the Commission's order to file the required written argument.

(g) **Description of appeal proceeding.**

(1) In appeals pursuant to this Section, the Commission en banc may:

(A) modify the decision of the Administrative Law Judge;

(B) reverse the decision of the Administrative Law Judge and render a new decision;

(C) reverse the decision of the Administrative Law Judge and remand the matter to the Administrative Law Judge with instructions or for a new administrative hearing; or

(D) affirm the decision of the Administrative Law Judge.

(2) The Commission en banc may reverse or modify the decision of an Administrative Law Judge only if it determines that the decision was against the clear weight of the evidence or was contrary to law. Any judgment of the Commission en banc which reverses a decision of the Administrative Law Judge shall contain specific findings relating to the reversal.

(3) All proceedings of the Commission en banc shall be recorded by a court reporter, if requested by a party. Any party requesting a transcript of the proceedings shall bear the costs associated with its preparation. During the pendency of an appeal to the Commission en banc, the Administrative Law Judge shall retain jurisdiction over any issue not affected by the eventual ruling of the appellate body.

(h) **Appeal to Supreme Court.** An order of the Commission en banc may be appealed to the Oklahoma Supreme Court, as provided in 85A O.S. § 78, within twenty (20) days of being sent to the parties as reflected by the file-stamped date on the order.

810:10-5-67. [RESERVED]

810:10-5-68. Enforcement of compensation judgment or award

A final compensation judgment or award issued by the Commission or an Administrative Law Judge which has not

been complied with by the employer or insurance carrier may be enforced as provided in 85A O.S. § 79.

PART 11. CONTEMPT

810:10-5-75. Contempt procedure

(a) **Commencement.** A cause filed for contempt for disobedience to or violation of law or a rule, order or judgment of the Commission shall be commenced by the filing of a verified complaint.

(b) **Complaint.** The complaint shall state:

(1) The name of the person, firm, trust, corporation, limited liability company or association against whom the complaint is made.

(2) Each law, rule or order of which violation is charged.

(3) In general terms, the acts or omissions constituting the violation of which complaint is made. If complaint is made of more than one violation, each violation shall be separately stated.

(c) **Citation.** When a complaint is filed, the Clerk of the Commission shall issue in the name of the state a citation directed to the person against whom complaint is made, which citation shall be accompanied by a copy of the complaint. The citation shall state:

(1) The name of the complainant and the date the complaint was filed.

(2) A brief description of the nature of the complaint.

(3) Reference to the accompanying copy of the complaint.

(4) The date upon which the complaint is set for hearing, which shall not be earlier than ten (10) days from the date the citation is served.

(5) A statement that, unless the person complained against shall on or before the date for hearing file a response to the complaint, the allegations and charges therein will be taken as confessed.

(d) **Service of citation.** Service of the citation for contempt may be made by a person directed to do so by order of the Commission. Service shall be made by mailing the citation for contempt by certified mail to the respondent's last known address as listed in Commission records. The respondent is responsible for notifying the Commission of any change of address.

(e) **Return of service.** The person making the service shall make his return thereof, and file the same with the Clerk of the Commission. The return shall show the time when the citation was received by him, and the time and manner the same was served by him, and such return shall be verified by the person making the service. Service of the citation for contempt on the respondent by certified mail shall be considered effective if returned from the last known address as listed in Commission records for the following reasons, including, but not limited to:

(1) Signed for by any person at the address listed.

(2) Undeliverable - no forwarding address, forwarding address expired, unclaimed and/or refused.

(f) **Default.** If no response to the complaint is filed on or before the date set for hearing, or if a respondent fails to appear at the time set for hearing, as specified in the citation, the Commission may immediately proceed to hear the complaint. After hearing the evidence, the Commission shall impose such fine pursuant to 85 O.S. § 73(B) as the facts and circumstances warrant, or dismiss the complaint.

(g) **Response.** A respondent who desires a hearing shall, on or before the time specified in the citation for hearing, file a response to the merits of the cause and shall appear at the time set for hearing. The response shall include all objections and defenses of any nature to the complaint and may include a motion to dismiss the complaint for reason of insufficiency thereof or lack of jurisdiction.

(h) **Hearing procedures.** At the hearing, the Commission shall first hear all objections and defenses other than to the merits of the complaint and shall enter an appropriate order thereon. Amendments may be permitted upon terms that are just, with or without grant of a continuance. After all preliminary questions are heard, the Commission shall hear the merits of the complaint, and at the conclusion thereof, shall impose such fine pursuant to 85 O.S. § 73(B) as the facts and circumstances warrant, or dismiss the complaint.

(i) **Hearing date.** Every cause instituted under this Section shall be tried on its merits on the date specified in the citation, or at such other time to which such cause shall be continued for hearing by the Commission.

PART 13. DISMISSALS

810:10-5-85. Dismissals

(a) **Generally.** Except as otherwise required by law, unless good cause is shown, dismissal of a complaint shall be without prejudice.

(b) **Untimely prosecution or failure to prosecute claim.**

(1) The Commission, on motion and after notice and hearing, may dismiss a claim for compensation with prejudice if no bona fide request for hearing with respect to the claim has been made within six (6) months of the filing of claim. The Commission may set such claims on a disposition docket.

(2) The Commission shall dismiss a claim for additional compensation without prejudice to refiling of the claim within the limitation period specified in 85A O.S. § 69(B), if no bona fide request for hearing with respect to the claim has been filed within six (6) months after the filing of the claim for additional compensation. A claim for additional compensation is described in 85A O.S. § 69(B)(C)(D).

(c) **Request of party filing claim for compensation.** Voluntary dismissal of a claim for compensation pursuant to a request of the worker is authorized in 85A O.S. § 108. This law gives the injured worker, upon order of the Commission and payment of the $140.00 final award fee provided for in 85A O.S. § 118, the right to dismiss the worker's claim for compensation at any time before final submission of the case to the Commission for decision. The worker's application

for dismissal shall be made on a Commission prescribed CC-Form-100. The dismissal shall be without prejudice, unless the Commission's order on the CC-Form-100 clearly identifies the dismissal as with prejudice. Prior to entering an order for dismissal with prejudice, the Commission may require notice and an evidentiary hearing.

PART 15. SETTLEMENTS

810:10-5-95. Joint petition settlements.

(a) Under 85A O.S. § 87 and 85A O.S. § 115, upon and after the filing of a claim for compensation, or, in the absence of a claim for compensation, the filing of the Employer's First Notice of Injury in a claim involving a pro se employee, the parties may engage in a compromise and release of any and all liability which is claimed to exist under the AWCA on account of the injury or occupational disease or illness, subject to approval by the Commission, an Administrative Law Judge, or a Benefit Review Officer.

(b) The parties in interest to a claim for compensation may settle upon and determine any and all issues and matters by agreement, subject to the terms and conditions of this Section.

(c) Any agreement submitted to the Commission, Administrative Law Judge or Benefit Review Officer of the Commission's Counselor Division, for approval shall be set forth in a Commission prescribed CC-Joint Petition Settlement. Nothing in this rule shall preclude the Multiple Injury Trust Fund from compromising a claim as authorized by 85A O.S. § 32(F).

(d) No CC-Joint Petition Settlement agreement shall be binding on the parties in interest unless it is approved by the Commission pursuant to 85A O.S. § 22, Administrative Law Judge of the Commission pursuant to 85A O.S. § 115, or a Commission Benefit Review Officer pursuant to 85A O.S. § 70. The CC-Joint Petition Settlement, including any attached appendix as provided in 85A O.S. § 115(B), identifying the outstanding issues that are subject to the Commission's continuing jurisdiction and possible reopen, shall be approved unless it is determined that:

(1) The agreement is unfair, unconscionable, or improper as a matter of law; or

(2) The agreement is the result of an intentional misrepresentation of a material fact; or

(3) The agreement, if for permanent disability, is not supported by competent medical evidence as required by 85 O.S. § 2(33).

(e) As used in this Section, "parties in interest" means the respondent (employer and the employer's insurance carrier if insured), and an employee. An employee who is not represented by legal counsel may effect a CC-Joint Petition Settlement upon the employer's filing of the Employer's First Notice of Injury as provided in 810:10-1-4, or the employee's filing of a claim for compensation (CC-Form-3 or CC-Form-3B), regarding the injury or occupational disease or illness which is the subject of the CC-Joint Petition Settlement.

(f) In no instance shall the total attorney's fee amount provided for in a CC-Joint Petition Settlement exceed the maximum attorney fee allowed by law.

(g) No CC-Joint Petition Settlement shall be made upon written interrogatory or deposition except in cases where the claimant is currently engaged in the military service of the United States, is outside of the state, is a nonresident of Oklahoma, or in cases of extreme circumstances.

(h) A stenographic record of the terms and conditions of an approved joint petition settlement and the understanding of the claimant concerning the effect of the settlement must be made by a Commission court reporter and transcribed at the expense of the employer or insurance carrier. Medical reports and other exhibits submitted in support of a CC-Joint Petition Settlement shall not be transcribed. The original exhibits or duplicate copies thereof shall be affixed to the original transcript and placed in the Commission file.

(i) A file-stamped copy of an approved CC-Joint Petition Settlement shall be mailed by the Commission to all unrepresented parties and attorneys of record.

(j) A CC-Joint Petition Settlement that fully and finally resolves all issues in a claim for compensation between the employee and the employer, shall not be deemed an adjudication of the rights between the medical or rehabilitation provider and the employer for reasonable and necessary medical and rehabilitation expenses incurred by the employee due to the injury before the file-stamped date of the approved CC-Joint Petition Settlement.

(k) Within seven (7) days of the date a medical provider provides initial treatment for a work-related accident, the medical provider shall provide notice in writing to the Commission, if and only if, a CC-Form-3 or CC-Form-3B has been filed with the Commission, and in all cases shall provide notice in writing to the patient's employer, and if known, the employer's insurance carrier. If the medical provider fails to provide the required notification, the medical provider forfeits any rights to future notification, including those circumstances where a case is fully and finally settled by a CC-Joint Petition Settlement, unless the medical provider is actually known to the employer or insurance carrier or is listed by the employee.

(l) If the issue of medical treatment is fully and finally settled by a CC-Joint Petition Settlement, the employee shall provide to the employer or insurance carrier a list of all medical providers known to the employee. The Commission prescribed Form CC-JPS shall be used for that purpose. Within ten (10) days from the file-stamped date of the CC-Joint Petition Settlement, the employer or insurance carrier shall send notice of the CC-Joint Petition Settlement to all medical providers listed by the employee and to all medical providers known to the employer or insurance carrier. The employee is liable for payment of any medical services rendered after the CC-Joint Petition Settlement is filed. The employee also is responsible for informing any future medical providers that the case or issue of medical treatment was fully and finally disposed of by a CC-Joint Petition Settlement and that the employee, rather than the employer or insurance carrier, is the party financially responsible for such services.

PART 17. FEES

810:10-5-105. Fees.

Fees payable to the Commission include:

(1) A fee of One Thousand Dollars ($1,000.00), payable by each carrier writing worker's compensation insurance in this state, upon securing a license to transact business in this state [85A O.S. § 29(A)];

(2) A fee of One Thousand Dollars ($1,000.00), payable by each self-insurer at the time it is approved to self-insure its obligations under the AWCA [85A O.S. § 29(B)];

(3) An annual fee of One Thousand Dollars ($1,000.00), payable by third-party administrators [85A O.S. § 29(C)];

(4) A fee of One Hundred Seventy-five Dollars ($175.00), payable by a party appealing an order or award of an Administrative Law Judge to the Commission en banc [85A O.S. § 78(B)];

(5) A fee of One Hundred Dollars ($100.00), for compiling and transmitting a record for appeal of a Commission order to the Oklahoma Supreme Court, payable by the appealing party [85A O.S. § 78(D)];

(6) A fee of One Hundred Forty Dollars ($140.00), payable by the party against whom an award becomes final (i.e. the employer or insurance carrier if there is an award of compensation, or the worker if there is a denial or dismissal of a claim for compensation) [85A O.S. § 118(A)]. Ten Dollars ($10.00) of the fee is payable by the Commission to the credit of the Attorney General's Workers' Compensation Fraud Unit Revolving Fund;

(7) A fee of One Hundred Thirty Dollars ($130.00), payable by the worker if the reopen request is to reopen on a change of condition for the worse, or payable by the employer or insurance carrier if the reopen request is to reopen on a change of condition for the better [85A O.S. § 118(B)];

(8) A fee of One Dollar ($1.00) per page, payable as a copy charge [85A O.S. § 119(A)];

(9) A fee of One Dollar ($1.00) per search request for prior claims records, not to exceed One Dollar ($1.00) per claims record of a particular worker [85A O.S. § 120(B)];

(10) A fee of Forty-five Dollars ($45.00), plus postage, if any, for a Commission handbook [85A O.S. § 20(B)]; and

(11) Such other fees as may be allowed by law or this Title.

[OAR Docket #15-562; filed 6-15-15]

TITLE 810. OKLAHOMA WORKERS' COMPENSATION COMMISSION CHAPTER 15. MEDICAL SERVICES

[OAR Docket #15-563]

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PERMANENT final adoption
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810:15-1-1 through 810:15-1-2 [NEW]
Subchapter 3. Workers' Compensation Fee Schedule [NEW]
810:15-3-1 through 810:15-3-2 [NEW]
Subchapter 5. Pharmaceutical Benefits [NEW]
810:15-5-1 through 810:15-5-4 [NEW]
Subchapter 7. Treatment Guidelines [NEW]
810:15-7-1 [NEW]
Subchapter 9. Independent Medical Examiners [NEW]
810:15-9-1 through 810:15-9-6 [NEW]
Subchapter 11. Medical Case Management [NEW]
810:15-11-1 through 810:15-11-5 [NEW]
Subchapter 13. Change of Treating Physician [NEW]
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Establishes procedures and standards governing medical matters over which the Commission has responsibility under the Administrative Workers'

Compensation Act, 85A O.S. §§ 1 et seq. Workers' compensation fee schedules are intended to establish presumptively fair and reasonable charges for health care services and supplies which may be covered under the AWCA. The rules set forth the qualifications and rules for independent medical examiners and independent medical case managers qualified by the Commission. The processes for a request for a change in treating physician and resolution of a medical dispute are established in Subchapter 13 and Subchapter 15 respectively.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 1. GENERAL PROVISIONS

810:15-1-1. Purpose

This Chapter establishes procedures and standards governing medical matters over which the Commission has responsibility under the Administrative Workers' Compensation Act, 85A O.S., §§ 1, et seq.

810:15-1-2. Definitions

In addition to the terms defined in 85A O.S., § 2, the following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"AWCA" means the Administrative Workers' Compensation Act, 85A O.S., §§ 1, et seq.

"Brand name drug" means a drug marketed under a proprietary, trademark-protected name.

"Case manager" means a person who is a registered nurse with a current, active unencumbered license from the Oklahoma Board of Nursing, or possesses one or more of the of the following certifications:

(A) Certified Disability Management Specialist (CDMS);

(B) Certified Case Manager (CCM);

(C) Certified Rehabilitation Registered Nurse (CRRN);

(D) Case Manager - Certified (CMC);

(E) Certified Occupational Health Nurse (COHN); or

(F) Certified Occupational Health Nurse Specialist (COHN-S).

"Certified workplace medical plan" means an organization that is certified by the Oklahoma State Department of Health to provide management of quality treatment to injured employees for injuries and diseases compensable pursuant to the workers' compensation laws of the State of Oklahoma.

"Claimant" means a person who claims benefits for an alleged work injury, occupational disease or illness, or death pursuant to the provisions of the AWCA.

"Closed formulary" means all available Food and Drug Administration (FDA) approved prescription and nonprescription drugs prescribed and dispensed for outpatient use, excluding:

(A) drugs identified with a status of "N" in the current edition of the Official Disability Guidelines Treatment in Workers' Comp (ODG)/Appendix A, ODG Workers' Compensation Drug Formulary, and any updates thereto;

(B) any compound drug;

(C) any investigational or experimental drug for which there is early, developing scientific or clinical evidence demonstrating the potential efficacy of the treatment, but which is not yet broadly accepted as the prevailing standard of care; and

(D) drugs that are not preferred, exceed or are not addressed by the ODG in effect on the date of treatment.

"Commission" means the Oklahoma Workers' Compensation Commission, a designee, or an administrative law judge to whom the Commission has delegated responsibility as authorized by 85A O.S., § 21(D).

"Compounding" means the preparation, mixing, assembling, packaging, or labeling of a drug or device:

(A) as a result of a practitioner's prescription drug order based on the practitioner-patient-pharmacist relationship in the course of professional practice;

(B) for administration to a patient by a practitioner as the result of a practitioner's initiative based on the practitioner-patient-pharmacist relationship in the course of professional practice;

(C) in anticipation of a prescription drug order based on a routine, regularly observed prescribing pattern; or

(D) for or as an incident to research teaching or chemical analysis and not for selling or dispensing except as may otherwise be allowed by law.

"Generic" or **"Generically equivalent"** means a drug that, when compared to the prescribed drug, is pharmaceutically equivalent and therapeutically equivalent.

"Independent medical examiner" means a licensed physician authorized to serve as a Commission appointed medical examiner as provided in the AWCA.

"Insurance carrier" means any stock company, mutual company, or reciprocal or interinsurance exchange authorized to write or carry on the business of workers' compensation insurance in this state, and includes an individual own risk employer or group self-insurance association duly authorized by the Commission to self fund its workers' compensation obligations.

"Maximum allowable reimbursement" or **"MAR"** means the maximum amount payable to a health care provider in the absence of a contractual fee arrangement that is consistent with 85A O.S., § 50(H)(5).

"Medical emergency" means the sudden onset of a medical condition manifested by acute symptoms of sufficient severity, including severe pain that in the absence of immediate medical attention could reasonably be expected to result in:

(A) placing the patient's health or bodily functions in serious jeopardy; or

(B) serious dysfunction of any body organ or part.

"Medical interlocutory order" or **"MIO"** means a medical interlocutory order provided a prescribing doctor or pharmacy in instances where preauthorization denials of a previously prescribed and dispensed drug(s) excluded from the closed formulary poses an unreasonable risk of a medical emergency.

"Nonprescription drug" means a non-narcotic drug that may be sold without a prescription and that is labeled and packaged in compliance with state or federal law. This may also be referred to as over-the-counter medication.

"Official Disability Guidelines" or **"ODG"** means the current edition of the Official Disability Guidelines and the ODG Treatment in Workers' Comp, excluding the return to work pathways, published by the Work Loss Data Institute.

"Pharmaceutically equivalent" means drug products that have identical amounts of the same active chemical ingredients in the same dosage form and that meet the identical compendia or other applicable standards of strength, quality, and purity according to the United States Pharmacopoeia or another nationally recognized compendium.

"Preauthorization" means prospective approval obtained from the employer or insurance carrier by the requestor or injured employee before providing pharmaceutical services for which preauthorization is required. For purposes of this chapter, "preauthorization" relates to prospective evaluation of only the medical necessity and reasonableness of healthcare to be prescribed or provided to an injured employee.

"Prescribing doctor" means a physician or dentist who prescribes prescription drugs or over-the- counter medications in accordance with the physician's or dentist's license and state and federal laws and rules. For purposes of this Chapter, "prescribing doctor" includes an advanced practice nurse or physician assistant to whom a physician has delegated the authority to carry out or sign prescription drug orders, as and to the extent authorized by Oklahoma law, who prescribes prescription drugs or over-the-counter medication under the physician's supervision and in accordance with the health care practitioner's license and state and federal laws and rules.

"Prescription" means an order for a prescription or nonprescription drug to be dispensed.

"Prescription drug" means:

(A) a substance for which federal or state law requires a prescription before the substance may be legally dispensed to the public;

(B) a drug that under federal law is required, before being dispensed or delivered, to be labeled with the statement: "Caution: federal law prohibits dispensing without prescription"; "Rx only"; or another legend that complies with federal law; or

(C) a drug that is required by federal or state statute or regulation to be dispensed on prescription or that is restricted to use by a prescribing doctor only.

"Requestor" means the health care provider or designated representative, including office staff or a referral health care provider/health care facility that requests preauthorization.

"Retrospective review" means the process of reviewing the medical necessity and reasonableness of health care that has been provided to an injured employee.

"Statement of medical necessity" means a written statement from the prescribing doctor to establish the need for treatments or services, or prescriptions, including the need for a brand name drug where applicable. A statement of medical necessity shall include:

(A) the injured employee's full name;

(B) date of injury;

(C) the last four digits of the injured employee's social security number;

(D) diagnosis code(s);

(E) whether the drug has previously been prescribed and dispensed, if known, and whether the inability to obtain the drug poses an unreasonable risk of a medical emergency; and

(F) how the prescription treats the diagnosis, promotes recovery, or enhances the ability of the injured employee to return to or retain employment.

"Substitution" means the dispensing of a drug or a brand of drug other than the drug or brand of drug ordered or prescribed.

"Therapeutically equivalent" means pharmaceutically equivalent drug products that, if administered in the same amounts, will provide the same therapeutic effect, identical in duration and intensity.

"Work-related injury" means a single event injury, cumulative trauma injury, or occupational disease or illness that arises out of and in the course of employment as provided in the AWCA.

"Workers' compensation fee schedule" means a state mandated schedule of maximum allowable reimbursement levels for health care providers, including hospitals, ambulatory surgical centers, and inpatient rehabilitation facilities, rendering reasonable and necessary health care services and supplies to an injured employee for a compensable injury pursuant to the Oklahoma workers' compensation laws.

SUBCHAPTER 3. WORKERS' COMPENSATION FEE SCHEDULE

810:15-3-1. Purpose

Workers' compensation fee schedules are intended to establish presumptively fair and reasonable charges for health care services and supplies which may be covered under the AWCA.

810:15-3-2. Applicability of 2012 workers' compensation fee schedule

(a) The Oklahoma workers' compensation fee schedule developed and adopted by the Workers' Compensation Court Administrator effective January 1, 2012 for health care services

and supplies rendered on and after that date to an injured employee for a compensable work-related injury (the "2012 fee schedule"), shall remain in full force and effect, unless and until superseded by a fee schedule that is adopted by the Commission and approved by the Oklahoma Legislature, in accordance with 85A O.S., § 50(H), or as otherwise provided by law. Specific provisions contained in the AWCA as implemented in this Chapter take precedence over any conflicting provision adopted by or utilized in the 2012 fee schedule with respect to injuries occurring on and after February 1, 2014.

(b) The 2012 fee schedule may be viewed at the Commission's main offices and is available on the Commission's website at http://www.wcc.ok.gov.

SUBCHAPTER 5. PHARMACEUTICAL BENEFITS

810:15-5-1. Pharmaceutical services

(a) **Prescriptions.** A doctor providing care to an injured employee shall prescribe for the employee medically necessary prescription drugs and over-the-counter medication alternatives as clinically appropriate and applicable in accordance with state law and as provided by this Section.

(b) **OTC medications.** When prescribing an OTC medication alternative to a prescription drug, the doctor shall indicate on the prescription the appropriate strength of the medication and the approximate quantity of the OTC medication that is reasonably required by the nature of the compensable injury. The doctor shall prescribe OTC medications in lieu of a prescription drug when clinically appropriate.

(c) **Generic prescriptions.** The doctor shall prescribe generic prescription drugs when available and clinically appropriate. If in the medical judgment of the prescribing doctor a brand name drug is necessary, the doctor must specify on the prescription that brand name drugs be dispensed in accordance with applicable state and federal law, and must maintain documentation justifying the use of the brand name drug, in the patient's medical record.

(d) **Use of formulary.** When prescribing, the doctor shall choose medications and drugs from the formulary adopted by the Commission.

(e) **Statement of medical necessity.** The insurance carrier, employee or pharmacist may request a statement of medical necessity from the prescribing doctor. The prescribing doctor shall provide the statement of medical necessity to the requesting party no later than the fourteenth working day after receipt of a request.

(f) **Explanation of benefits.** In addition to other requirements regarding explanation of benefits (EOB) provided in the Oklahoma workers' compensation fee schedule, at the time an insurance carrier denies payment for medications for any reason related to medical necessity or reasonableness of health care, the insurance carrier shall also send the EOB to the injured employee and the prescribing doctor.

(g) **Billing and reimbursement.** Billing, reimbursement methodologies and the maximum allowable reimbursement for pharmaceutical services are subject to 85A O.S., § 50 and the Oklahoma workers' compensation fee schedule in effect on the date of service, unless the services are provided pursuant to a certified workplace medical plan or a written contract between the insurance carrier and provider as provided in 85A O.S., § 55(B).

810:15-5-2. Closed formulary

The Commission hereby adopts a closed formulary as defined in 810:15-1-2 for workers' compensation claims with a date of injury on and after February 1, 2014.

810:15-5-3. Requirements for use of closed formulary

(a) **Applicability.** The closed formulary adopted pursuant to 810:15-5-2 applies to all drugs that are prescribed and dispensed for outpatient use for claims with a date of injury on or after February 1, 2014.

(b) **Preauthorization for claims subject to the Commission's closed formulary.** Preauthorization is only required for drugs that are excluded from the closed formulary, as defined in this Chapter.

(c) **Preauthorization request.** The preauthorization request must include the prescribing doctor's drug regimen plan of care, and the anticipated dosage or range of dosages for the drugs. Failure to request preauthorization entitles an insurance carrier or employer to deny payment for the drug in question. If the insurance carrier or employer fails to respond to a preauthorization request within three (3) days, the request shall be deemed approved.

(d) **Preauthorization of intrathecal drug delivery systems.**

(1) An intrathecal drug delivery system requires preauthorization and the preauthorization request must include the prescribing doctor's drug regimen plan of care, and the anticipated dosage or range of dosages for the administration of pain medication.

(2) Refills of an intrathecal drug delivery system with drugs excluded from the closed formulary, which are billed using Healthcare Common Procedure Coding System (HCPCS) Level II J codes, require preauthorization on an annual basis. Preauthorization for these refills is also required whenever:

(A) the medications, dosage or range of dosages, or the drug regime proposed by the prescribing doctor differs from the medications, dosage or range of dosages, or drug regime previously preauthorized by that prescribing doctor; or

(B) there is a change in prescribing doctor.

(e) **Treatment guidelines.** Except as provided by this Subsection, the prescribing of drugs shall be in accordance with 810:15-7-1 relating to treatment guidelines. Prescription and nonprescription drugs included in the Commission's closed formulary may be prescribed and dispensed without preauthorization.

810:15-5-4. Medical Interlocutory Order

(a) The purpose of this Section is to provide a prescribing doctor or pharmacy an ability to obtain a medical interlocutory order (MIO) in instances where preauthorization denials of a previously prescribed and dispensed drug excluded from the closed formulary poses an unreasonable risk of a medical emergency as defined in 810:15-1-2.

(b) An MIO will be issued if the request for an MIO contains the following information:

(1) injured employee name;

(2) date of birth of injured employee;

(3) prescribing doctor's name;

(4) name of drug and dosage;

(5) MIO requestor's name (pharmacy or prescribing doctor);

(6) MIO requestor's contact information;

(7) a statement that a preauthorization request for a previously prescribed and dispensed drug, which is excluded from the closed formulary, has been denied by the insurance carrier;

(8) a statement that the preauthorization denial poses an unreasonable risk of a medical emergency as defined in 810:15-1-2;

(9) a statement that the potential medical emergency has been documented in the preauthorization process;

(10) a statement that the insurance carrier has been notified that a request for an MIO is being submitted to the Commission; and

(11) a signature and the following certification by the MIO requestor for Paragraphs (7) through (11) of this Subsection, "I hereby certify under penalty of perjury that the previously listed conditions have been met."

(c) A complete request for an MIO under this Section shall be processed and approved by the Commission in accordance with this Section. At the discretion of the Commission, an incomplete request for an MIO under this Section may be considered in accordance with this Section.

(d) The request for an MIO may be submitted on the designated Commission form. The form is available on the Commission's website, http://www.wcc.ok.gov. If the Commission form is not available, the written request must contain the provisions of Subsection (b) of this Section.

(e) The MIO requestor shall provide a copy of the MIO request to the insurance carrier, prescribing doctor, injured employee, and dispensing pharmacy, if known, on the date the request for MIO is submitted to the Commission.

(f) An approved MIO shall be effective retroactively to the date the complete request for an MIO is received by the Commission.

(g) The MIO shall continue in effect until the later of:

(1) final adjudication of a medical dispute regarding the medical necessity and reasonableness of the drug contained in the MIO;

(2) expiration of the period for a timely appeal; or

(3) agreement of the parties.

(h) A party shall comply with an MIO entered in accordance with this Section and the insurance carrier shall reimburse the pharmacy for prescriptions dispensed in accordance with an MIO.

(i) The insurance carrier shall notify the prescribing doctor, injured employee, and the dispensing pharmacy once reimbursement is no longer required in accordance with Subsection (g) of this Section.

(j) A party may seek to dispute, reverse or modify an MIO issued under this Section by filing a written request for a hearing before an Administrative Law Judge of the Commission.

SUBCHAPTER 7. TREATMENT GUIDELINES

810:15-7-1. Treatment guidelines

(a) Health care not subject to a certified workplace medical plan shall be provided using the ODG in effect at the time of treatment as the primary standard of reference for determining the frequency and extent of services presumed to be medically necessary and appropriate for compensable injuries under the AWCA, and in resolving such matters in the event a dispute arises; provided, per 85A O.S., § 16(B), a doctor providing care to an injured employee shall prescribe for the employee medically necessary prescription drugs and over-the-counter alternatives as clinically appropriate and recommended by the ODG, and as provided in Subchapter 5 of this Chapter.

(b) Health care provided by a certified workplace medical plan shall be in accordance with the plan's treatment guidelines. Pursuant to 85A O.S., § 64(B)(1), the plan's treatment guidelines shall be consistent with the ODG in effect at the time of treatment.

(c) Oklahoma Treatment Guidelines (OTG) adopted by the Physician Advisory Committee pursuant to 85 O.S., § 373(B)(6), effective April 2, 2012, for the prescription and dispensing of any controlled substance included in Schedule II of the Uniform Controlled Dangerous Substances Act, and pursuant to 85 O.S., § 373(B)(5), effective June 24, 2013, for medical treatment for injuries to the spine, are not applicable for care of injured employees with a work-related injury occurring on or after February 1, 2014. These OTG shall be superceded by any "Physician Advisory Committee Guidelines" (PACG) adopted by the Physician Advisory Committee pursuant to 85A O.S., § 17(B). The PACG shall be adopted only for:

(1) medical treatment not addressed by the latest edition of the ODG; and

(2) the prescription and dispensing of any controlled substance included in Schedule II of the Uniform Controlled Dangerous Substances Act if not addressed by the latest edition of the ODG.

(d) Information on how to access the ODG or any PACG may be found on the Commission's website, http://www.wcc.ok.gov.

SUBCHAPTER 9. INDEPENDENT MEDICAL EXAMINERS

810:15-9-1. Qualifications

(a) The Commission shall maintain a list of private physicians to serve as independent medical examiners. The list shall be placed on the Commission's website at http://www.wcc.ok.gov.

(b) To be eligible for appointment by the Commission to the list of qualified independent medical examiners, and for retention on the list, the physician must:

(1) have a valid, unrestricted professional license as a physician which is not probationary;

(2) have at least three (3) years' experience and competency in the physician's specific field of expertise and in the treatment of work-related injuries;

(3) be knowledgeable of workers' compensation principles and the workers' compensation system in Oklahoma, as demonstrated by prior experience and attend Commission sponsored educational programming at least once every two (2) years, including programming in the Official Disability Guidelines if a treating physician and/or in the American Medical Association's "Guides to the Evaluation of Permanent Impairment" if a physician rating permanent impairment;

(4) have in force and effect health care provider professional liability insurance from a domestic, foreign or alien insurer authorized to transact insurance in Oklahoma. The per claim and aggregate limits of the insurance must be at least One Million Dollars ($1,000,000.00);

(5) have no felony conviction under federal or state law within seven (7) years before the date of the physician's application to serve as a qualified independent medical examiner; and

(6) have a valid Oklahoma State Bureau of Narcotics and Dangerous Drugs Control (BNDD) registration and federal Drug Enforcement Agency (DEA) registration, as authorized by law for the physician's professional license.

(c) Physicians who are serving unexpired terms as qualified independent medical examiners for the Oklahoma Workers' Compensation Court on February 1, 2014 shall serve as qualified independent medical examiners for the Commission until their respective terms expire, unless voluntarily terminated by the physician or revoked by the Commission, and may reapply for successive qualification periods. The two year period in which to meet the educational requirement in 810:15-9-1(b)(3) commences with the independent medical examiner's first appointment or renewal after February 1, 2014.

810:15-9-2. Application and appointment process

(a) **Appointment.** Appointment of physicians to the list of qualified independent medical examiners, and maintenance and periodic validation of such list shall be by the Commission. Physician appointments shall be for a two-year period.

(b) **Application for appointment.** To request appointment to the list of qualified independent medical examiners, a physician shall:

(1) Submit a signed and completed Commission prescribed IME Application and Physician Disclosure forms to the following address: Oklahoma Workers' Compensation Commission, Attention: HEALTH SERVICES DIVISION, 1915 North Stiles Avenue, Oklahoma City, Oklahoma 73105. Illegible, incomplete or unsigned applications and disclosures will not be considered by the Commission and shall be returned. A copy of the IME Application and Physician Disclosure forms may be obtained from the Commission at the address set forth in this Paragraph, or from the Commission's website at http://www.wcc.ok.gov;

(2) Submit a current curriculum vitae, together with the IME Application and Physician Disclosure forms, to the address set forth in the preceding Paragraph; and

(3) Verify that the physician, if appointed, will:

(A) provide independent, impartial and objective medical findings in all cases that come before the physician;

(B) decline a request to serve as an independent medical examiner only for good cause shown;

(C) conduct an examination, if necessary, within forty-five (45) calendar days from the date of the order appointing the examiner, unless otherwise approved by the Commission, when necessary to render findings on the questions and issues submitted;

(D) prepare a written report in accordance with Commission rules which addresses the issues set out in the order of appointment;

(E) submit the report to the parties and the Commission within fourteen (14) calendar days of a required examination of the claimant and/or completion of necessary tests, or within fourteen (14) calendar days after receipt of necessary records and information if no examination and/or tests are required;

(F) accept as payment in full for services rendered as an independent medical examiner the fees established pursuant to 810:15-9-5;

(G) submit to a review pursuant to 810:15-9-3 and 85A O.S., § 112(H);

(H) submit annually to the Commission written verification of valid health care provider professional liability insurance as and if required in 810:15-9-1;

(I) notify the Commission in writing upon any change affecting the physician's qualifications as provided in 810:15-9-1; and

(J) comply with all applicable statutes and Commission rules.

(c) **Disclosure.** As part of the IME Application, the physician shall identify, on the Physician Disclosure form, any ownership or interest in a health care facility, business or diagnostic center that is not the physician's primary place of business, including any employee leasing arrangement between the physician and any health care facility that is not the physician's primary place of business. Failure to do so is grounds for the Commission to disqualify the physician from providing treatment under the AWCA.

810:15-9-3. Revocation

(a) Removal of a physician from the list of qualified independent medical examiners shall be by request of the independent medical examiner or by the Commission after notice and opportunity for hearing.

(b) The Commission may remove a physician from the list of qualified independent medical examiners for cause, including, but not limited to the following grounds:

(1) a material misrepresentation on the IME Application or Physician Disclosure forms;

(2) refusal or substantial failure to notify the Commission of any change affecting the physician's qualifications as provided in 810:15-9-1; or

(3) refusal or substantial failure to comply with this Subchapter, 85A O.S., § 112, or other applicable Commission rules and statutes.

(c) Proceedings related to revocation shall be governed by 810:10-5-50 on show cause hearings and the contested hearings rules set forth in Subchapter 5 of Chapter 10 of this Title.

(d) In arriving at a determination regarding whether to remove a physician from the list, the Commission may consider the character of the alleged violation and all of the attendant circumstances, and may confer with the Physician Advisory Committee created in 85A O.S., § 17, or other public or private medical consultants.

(e) A physician whose qualification to serve as independent medical examiner has been revoked by the Commission is not eligible to be selected as an independent medical examiner during the period of revocation.

810:15-9-4. Requests for assignment

(a) Appointment of an independent medical examiner from the Commission's list of independent medical examiners is governed by this Section. Appointments shall take into account the specialty, availability and location of the examiner. The independent medical examiner selected shall be certified by a recognized specialty board in the area or areas appropriate to the condition under review.

(b) Requests for the appointment of an independent medical examiner may be set for a prehearing conference, at the discretion of the Commission.

(c) An independent medical examiner may be appointed on any issue before the Commission, including to determine if further medical treatment is needed following a full duty release on all body parts by the treating physician. If surgery is recommended by a treating physician, upon request of the employer, an independent medical examiner who is qualified to perform the type of surgery recommended shall be appointed to determine the reasonableness and necessity of the surgery.

(d) The parties shall send the employee's medical records to the independent medical examiner by regular mail within ten (10) calendar days of receipt of the Commission order assigning the examiner. If necessary, the independent medical examiner may contact persons in whose possession the records or information is located solely for the purpose of obtaining such records or information.

(e) An independent medical examiner's opinion is binding unless there is clear and convincing evidence to the contrary. Deviations by the Commission from the independent medical examiner's opinion must be explained.

810:15-9-5. Fees and costs

(a) Fees for services performed by a Commission appointed independent medical examiner shall be paid according to the following schedule:

(1) Diagnostic tests relevant to the questions or issues in dispute shall be paid by the employer or insurance carrier in accordance with the Oklahoma workers' compensation fee schedule; provided, diagnostic tests repeated sooner than six (6) months from the date of the test are not authorized for payment unless agreed to by the parties or ordered by the Commission for good cause shown.

(2) The review of records and information, including any treating physician evaluation and/or medical reports submitted by the parties, the performance of any necessary examinations, and the preparation of a written report as prescribed by Commission rules, shall be billed at the physician's usual and customary rate, not to exceed Three Hundred Dollars ($300.00) per hour or any portion thereof, not to exceed a maximum reimbursement of One Thousand Six Hundred Dollars ($1,600.00) per case. The Commission may permit exception to this provision, for good cause shown. Subject to reimbursement if appropriate, these costs shall be billed to, and initially paid by, the respondent.

(3) Reimbursement for medical testimony given in person or by deposition shall be paid by the employer or insurance carrier in accordance with the independent medical examiner's usual and customary charges, not to exceed Four Hundred Dollars ($400.00) per hour or any portion thereof, plus an allowance of One Hundred Dollars ($100.00) for 15 minute increments thereafter. Preparation time shall be reimbursed at the examiner's usual and customary charge, not to exceed Four Hundred Dollars ($400.00). A Four Hundred Dollar ($400.00) charge is allowable whenever a deposition or scheduled testimony is canceled by any party within three working days before the scheduled start of the deposition or scheduled testimony. The party canceling the deposition or scheduled testimony is responsible for the incurred cost.

(4) Amounts owed to the independent medical examiner for services are payable upon submission of the examiner's written report.

(5) The independent medical examiner may charge and receive up to Two Hundred Dollars ($200.00), to be paid initially by the employer or insurance carrier in the event the employee fails to appear for any scheduled examination, or if the examination is canceled by the employee or the respondent within forty-eight (48) hours of the scheduled time. The employer or insurance carrier shall be reimbursed by the employee if the failure to appear or the cancellation by the employee was without good cause. The independent medical examiner may not assess a cancellation charge for appointments canceled by the examiner.

(b) Failure to timely pay a Commission appointed independent medical examiner for services rendered pursuant to Commission order may result in the imposition of assessments or sanctions at the discretion of the administrative law judge or Commission, including a fine for contempt as provided in 85A O.S., § 73(B). Disputes regarding payment for services rendered by a Commission appointed independent medical examiner that cannot be resolved by the examiner and the parties themselves, may be addressed by filing a request for hearing before an administrative law judge of the Commission as provided in 810:10-5-16, or by mediation, as appropriate.

810:15-9-6. Renewal process

(a) The Commission shall notify the independent medical examiner of the end of the examiner's two-year qualification period at least sixty (60) calendar days before the expiration of that period and shall apprise the examiner how to access the IME Application and Physician Disclosure forms for reapplication as an independent medical examiner.

(b) Criteria for reapplication shall be governed by 810:15-9-1 and 810:15-9-2. If a curriculum vitae (CV) was previously submitted with a request for independent medical examiner status, the physician does not have to resubmit the physician's CV, unless there have been material changes that would have bearing upon the applicant's qualifications.

SUBCHAPTER 11. MEDICAL CASE MANAGEMENT

810:15-11-1. Qualifications

(a) The Commission shall maintain a list of private medical case managers to serve as independent medical case managers. The list shall be placed on the Commission's website at http://www.wcc.ok.gov.

(b) To be eligible for appointment by the Commission to the list of qualified independent medical case managers, and for retention on the list, the applicant must:

(1) be a registered nurse with a current, active unencumbered license from the Oklahoma Board of Nursing, or possess one or more of the following certifications:

(A) Certified Disability Management Specialist (CDMS);

(B) Certified Case Manager (CCM);

(C) Certified Rehabilitation Registered Nurse (CRRN);

(D) Case Manager - Certified (CMC);

(E) Certified Occupational Health Nurse (COHN); or

(F) Certified Occupational Health Nurse Specialist (COHN-S);

(2) be highly experienced and competent in the field of medical case management as it relates to the care and treatment of work-related injuries;

(3) be knowledgeable of workers' compensation principles and the workers' compensation system in Oklahoma as demonstrated by prior experience and/or education;

(4) have no felony conviction under federal or state law within seven (7) years before the date of the applicant's application to serve as a qualified independent medical case manager; and

(5) have a valid professional license as a nurse or case manager certification as provided in Subsection (a) of this Section, which is not probationary or restricted.

(c) Case managers who are serving unexpired terms as qualified case managers for the Oklahoma Workers' Compensation Court on February 1, 2014 shall serve as qualified case managers for the Commission until their respective terms expire, unless voluntarily terminated by the case manager or revoked by the Commission, and may reapply for successive qualification periods.

810:15-11-2. Application and appointment process

(a) **Appointment.** Appointment of applicants to the list of qualified independent medical case managers, and maintenance and periodic validation of such list shall be by the Commission. Medical case manager appointments to the list shall be for a two year period.

(b) **Application for appointment.** To request appointment to the list of qualified medical case managers, an applicant shall:

(1) Submit a signed and completed Commission prescribed MCM Application form to the following address: Oklahoma Workers' Compensation Commission, Attention: HEALTH SERVICES DIVISION, 1915 North Stiles Avenue, Oklahoma City, Oklahoma, 73105. Illegible and incomplete or unsigned applications will not be considered by the Commission and shall be returned. A copy of the MCM Application form may be obtained from the Commission at the address set forth in this Paragraph, or from the Commission's website at http://www.wcc.ok.gov;

(2) Submit a current resume, together with the MCM Application form, to the Commission; and

(3) Verify that the applicant, if appointed, will:

(A) provide independent, impartial and objective medical case management services in all cases assigned to the case manager;

(B) decline a request to serve as a medical case manager only for good cause shown;

(C) meet with the claimant and appear at any appointments with treating physicians, as directed by the Commission, and when necessary to report findings or respond to questions and issues submitted by the Commission;

(D) submit an initial written report to the parties and Commission within twenty (20) calendar days from the date of the order appointing the case manager, or sooner as the particular circumstances of the medical care or treatment or inquiries from the Commission may necessitate. Progress reports shall be submitted as the particular circumstances of each case warrant, or as directed by the Commission;

(E) notify the Commission in writing upon any change affecting the medical case manager's qualifications as provided by statute or in 810:15-11-1; and

(F) comply with all applicable statutes, Commission rules, and orders in the case assigned.

(c) **Disclosure.** As part of the MCM Application, the case manager shall identify, on the application form, any employer, insurer, employee group, certified workplace medical plan, or representatives of the above with whom the case manager is under contract, or who regularly uses the services of the case manager.

810:15-11-3. Revocation

(a) Removal of a case manager from the list of qualified independent medical case managers shall be at the request of the case manager, or by the Commission after notice and opportunity for hearing.

(b) Grounds for removal include, but are not limited to:

(1) a material misrepresentation on the MCM Application for appointment to the list of qualified independent medical case managers;

(2) refusal or substantial failure to notify the Commission of any change affecting the case manager's qualifications as provided by statute or 810:15-11-1; or

(3) refusal or substantial failure to comply with this Subchapter, or other applicable Commission rules, statutes or orders in the specific case assigned.

(c) Proceedings related to revocation shall be governed by 810:10-5-50 on show cause hearings and the contested hearings rules set forth in Subchapter 5 of Chapter 10 of this Title.

(d) In arriving at a determination regarding whether to remove a case manager from the list, the Commission may consider the character of the alleged violation and all of the attendant circumstances, and may confer with the Physician Advisory Committee created in 85A O.S., § 17, or other public or private medical or case management consultants.

(e) A case manager whose qualification to serve as an independent medical case manager has been revoked by the Commission is not eligible to be selected as an independent medical case manager during the period of revocation.

810:15-11-4. Requests for assignment

(a) For cases not covered by a certified workplace medical plan, and where the employer, insurance company, or own risk employer does not provide case management, the Commission may grant case management on the request of any party or when the Commission determines that case management is appropriate. Nothing in this Section shall limit the Commission's ability to appoint a case manager by agreement of the parties, or as otherwise allowed by law.

(b) If the parties to a dispute cannot agree on an independent medical case manager of their own choosing, the Commission may appoint one from the list of qualified independent medical case managers maintained by the Commission.

(c) In order to be eligible for appointment in any given case, a qualified medical case manager:

(1) shall not have a financial interest in the claimant's award; and

(2) shall not have any financial interest in the employer's or insurer's business, nor regularly contract with or serve as a case manager for the employer, insurer, or employer's own risk group, or a certified workplace medical plan with which the employer or employer's own risk group contracts.

(d) The parties are encouraged to request the appointment of an independent medical case manager at a prehearing conference.

(e) Requests for the appointment of an independent medical case manager may be set for a prehearing conference, at the discretion of the Commission.

(f) Upon appointment, the parties shall send information and all medical records to the independent medical case manager, by regular mail, within ten (10) calendar days of receipt of the Commission order assigning the case manager.

(g) If a party makes a good faith effort to get medical records (including diagnostic films) and the records are unobtainable, then a letter to this effect shall be sent to the case manager with copies to all other parties and the Commission, together with information as to the known location of any such records or information not in either the attorney's or client's possession. If necessary, the case manager may contact persons in whose possession the records or information is located solely for the purpose of obtaining such records or information.

(h) The respondent shall pay all reasonable and customary charges of a medical case manager appointed by the Commission. Failure to timely pay a Commission appointed independent medical case manager for services rendered pursuant to Commission order may result in the imposition of assessments and sanctions by the administrative law judge or Commission, including a fine for contempt as provided in 85A O.S., § 73(B). Disputes regarding payment for services rendered by a Commission appointed independent medical case manager that cannot be resolved by the case manager and the parties themselves, may be addressed by filing a request for hearing before an administrative law judge of the Commission as provided in 810:10-5-16, or by mediation, as appropriate.

810:15-11-5. Renewal process

(a) The Commission shall notify the independent medical case manager of the end of the case manager's two-year qualification period at least sixty (60) calendar days before the expiration of that period and shall apprise the case manager how to access the MCM Application form for reapplication as an independent medical case manager.

(b) Criteria for reapplication shall be governed by 810:15-11-1 and 810:15-11-2. If a resume has been previously submitted to the Court with a request for independent medical case manager status, the case manager does not have to resubmit the case manager's resume, unless there have been material changes that would have bearing upon the applicant's qualifications.

SUBCHAPTER 13. CHANGE OF TREATING PHYSICIAN

810:15-13-1. Scope

(a) This Subchapter applies to requests to the Commission for a change of treating physician made by a claimant who is not subject to a certified workplace medical plan. These requests are authorized in 85A O.S. § 56(B).

(b) Requests for a change of treating physician sought by an injured employee of an employer that previously contracted with a certified workplace medical plan are not subject to this Subchapter. Such requests must be made by utilizing the plan's dispute resolution process on file with the State Department of Health.

810:15-13-2. Change of physician; no certified workplace medical plan

(a) A claimant seeking a change of treating physician pursuant to 85A O.S. § 56(B) for a work-related injury occurring on and after February 1, 2014, shall file a Commission prescribed Application for Change of Treating Physician with the Commission. Upon such application, the Commission shall grant one (1) change of treating physician. At that time, the employer shall provide the claimant a list of three (3) licensed physicians from which to select the replacement treating physician. Each physician listed shall be qualified to treat the affected body part or condition for which a change of physician is sought.

(b) Nothing in this Section is intended to preclude the parties from agreeing upon a change of physician without the necessity of complying with Subsection (a) of this Section, or from utilizing mediation to resolve a request for change of physician.

SUBCHAPTER 15. MEDICAL DISPUTE RESOLUTION

810:15-15-1. Definitions

In addition to the terms defined in 85A O.S., § 2 and 810:15-1-2, the following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Medical fee dispute" means a dispute that involves an amount of payment for health or rehabilitation services, medicines or supplies rendered to an injured employee. "Medical fee dispute" includes a health care provider dispute of the denial or reduction by the insurance carrier of a bill for services. "Medical fee dispute" does not include disputes that involve an amount of payment for health care services rendered to an injured employee by a certified workplace medical plan or pursuant to a written contract between the insurance carrier and provider as provided in 85A O.S., § 55(B).

"Medical fee dispute resolution" or **"MFDR"** means a process for resolution of a medical fee dispute.

810:15-15-2. Payment of charges

(a) As provided in 85A O.S., 50(H), payment for medical care required by the AWCA is due within forty-five (45) days of receipt by the employer or insurance carrier of a complete and accurate invoice. The late payment of medical charges, absent good cause, may subject the employer or insurance carrier to a Commission ordered penalty of up to twenty-five percent (25%) of any amount due under the Oklahoma workers' compensation fee schedule that remains unpaid. The Commission also may assess a civil penalty of up to Five Thousand Dollars ($5,000.00) per occurrence if the Commission finds a pattern of an employer or insurance carrier willfully and knowingly delaying payments for medical care. Any such fines and penalties assessed under the AWCA, upon collection, shall be deposited to the Workers' Compensation Fund created in 85A O.S., § 28.

(b) Medical care provided as recommended by the ODG is presumed reasonable, and also is presumed to be health care reasonably required. In order for the insurance carrier to deny payment for medical services that are recommended by the ODG, the denial must be supported by clear and convincing medical evidence. A medical provider whose services exceed, are not recommended, or are not addressed by the ODG, must support the deviation from the ODG by clear and convincing medical evidence, in writing to the insurance carrier, as a condition of payment for services rendered. Resolution of medical fee disputes involving deviation from the ODG are governed by 810:15-15-4.

810:15-15-3. Medical dispute resolution of fee disputes

(a) **Applicability.** This Section applies to a request to the Commission for a medical fee dispute resolution (MFDR) pertaining to an injury sustained by an injured employee on and after February 1, 2014. Medical fee dispute resolution requests involving an injury occurring before February 1, 2014 shall be resolved in accordance with the statutes and rules applicable to the Oklahoma Workers' Compensation Court of Existing Claims.

(b) **Provider Request for MFDR.** Requests by a health care provider for MFDR shall be filed and processed in the form and manner prescribed in this Section.

(1) **MFDR Form 19.** A provider may initiate proceedings to address a medical fee dispute by filing a Commission prescribed MFDR Form 19 with the Commission. A copy of the form may be obtained from the Commission at its main offices, or from the Commission's website.

(2) **Request for hearing.** A provider may request a hearing for determination of the issues raised on the MFDR Form 19 by filing a request for hearing before an administrative law judge of the Commission as provided in 810:2-5-16. The provider shall send a copy of the request for hearing, together with a copy of the MFDR Form 19 and the records and supporting documentation required in Paragraph (4) of this Subsection, to the insurance carrier. The insurance carrier shall file a response to the MFDR Form 19 as provided in Paragraph (5) of this Subsection.

(3) **Contents of MFDR Form 19.** The health care provider's MFDR Form 19 shall include the following information, and such other information as may be required on the form, and shall be signed by the provider under penalty of perjury:

(A) the name, address, and contact information of the provider;

(B) the name of the injured employee;

(C) the date of injury;

(D) the date(s) of the service(s) in dispute;

(E) the place of service;

(F) the treatment or service code(s) in dispute;

(G) the amount billed by the health care provider for the treatment(s) or service(s) in dispute;

(H) the amount paid by the workers' compensation insurance carrier for the treatment(s) or service(s) in dispute;

(I) the disputed amount for each treatment or service in dispute;

(J) a statement of whether or not there is a final decision regarding compensability, extent of injury, liability and/or medical necessity for the health care related to the dispute; and

(K) a position statement of the disputed issue(s) which includes:

(i) the provider's reasoning for why the disputed fees should be paid,

(ii) a discussion of how the AWCA, Commission rules, and/or the Oklahoma workers' compensation fee schedule impacts the disputed fee issues, including reference to the specific general instruction, ground rule or other provision of the Oklahoma workers' compensation fee schedule serving as the basis for the requested reimbursement, and

(iii) a discussion of how the submitted documentation supports the provider's position for each disputed fee issue.

(4) **Supplemental records and documentation.** The following records and documentation applicable to a provider's MFDR Form 19 shall be sent by the provider to the insurance carrier as provided in Paragraph (2) of this Subsection, but shall not be attached to the MFDR Form 19 when the form is filed with the Commission:

(A) a paper copy of all medical bills related to the dispute, as originally submitted to the insurance carrier;

(B) a paper copy of each explanation of benefits (EOB) related to the dispute as originally submitted to the health care provider;

(C) a copy of all applicable medical records related to the dates of service in the dispute; and

(D) any other documentation that the provider deems applicable to the medical fee dispute.

(5) **Respondent response.**

(A) The insurance carrier shall respond to the MFDR Form 19 by filing a Commission prescribed MFDR Form 10M within thirty (30) days of the file-stamped date of the CC-Form-9 Request for Hearing filed by the provider. The response shall provide any missing information not provided by the health care provider and known to the respondent. The MFDR Form 10M shall include the following information, and such other information as may be required on the form, and shall be signed by the respondent under penalty of perjury:

(i) the name, address, and contact information of the respondent; and

(ii) a position statement of the disputed issue(s) which includes:

(I) the respondent's reasoning for why the disputed fees should not be paid,

(II) a discussion of how the AWCA, Commission rules, and/or the Oklahoma workers' compensation fee schedule impacts the disputed fee issues, including reference to the specific general instruction, ground rule or other provision of the Oklahoma workers' compensation fee schedule serving as the basis for the respondent's position, and

(III) a discussion of how the submitted documentation supports the respondent's position for each disputed fee issue.

(B) The respondent shall send the MFDR Form 10M, together with the following records and documentation applicable to the respondent's MFDR Form 10M, to the provider. The records and documentation shall not be attached to the MFDR Form 10M when the form is filed with the Commission:

(i) a paper copy of all initial and appeal EOBs related to the dispute, as originally submitted to the health care provider, related to the health care in dispute not submitted by the health care provider, or a statement certifying that the respondent did not receive the health care provider's disputed billing before the MFDR Form 19 dispute request;

(ii) a paper copy of all medical bills related to the dispute, if different from that originally submitted to the insurance carrier for reimbursement; and

(iii) a copy of any pertinent medical records or other documents relevant to the fee dispute not already provided by the health care provider.

(6) **Determination of allowable amounts.**

(A) **Audits.** Audits of medical bills to determine the amount allowable under the appropriate Oklahoma workers' compensation fee schedule may be offered by each party. Audits prepared by billing review services, medical bill audit services or in-house auditors may be submitted as evidence reflecting the methodology of the application of the fee schedule. The fee schedule sets maximum amounts allowable but does not prohibit a party from asserting a lesser amount should be paid.

(B) **Referral to the Health Services Division.**

(i) The Commission, at its discretion, may refer medical fee disputes which involve conflicting

interpretations of the Oklahoma workers' compensation fee schedule and a reduction by the insurance carrier of the provider's bill for health care services determined to be medically necessary and appropriate for the injured employee's compensable injury, to the Commission's Health Services Division for a recommendation regarding the maximum reimbursement amount allowed under the fee schedule for the services rendered.

(ii) Medical fee disputes involving the denial by an insurance carrier of a bill for services based on denial of compensability of the injured employee's injury or occupational disease, length of treatment, necessity of treatment, unauthorized physician or other ground, shall not be referred to the Division.

(7) **Hearing dockets.** MFDR Form 19 hearings shall be scheduled initially on an administrative docket to determine the payment status of the disputed medical fee charges. If the charges are not paid before the administrative hearing or the parties are unable to resolve the dispute at the administrative hearing, the dispute shall be set on the assigned administrative law judge's hearing docket.

(8) **Appearances.** Appearances at the administrative docket and before the administrative law judge or Commission are governed by 810:10-1-9.

(9) **Mediation.** Nothing in this Subchapter is intended to preclude resolution of medical fee disputes by mediation or agreement of the parties, as appropriate.

810:15-15-4. Other medical disputes

Medical disputes not otherwise addressed by this Subchapter, including, but not limited to, matters of medical necessity or appropriateness, requests by an injured employee for a refund or reimbursement for health care paid by the employee, and requests initiated by the employer or insurance carrier pursuant to 85A O.S., § 55 for a determination of the reasonableness of charges for appropriate and necessary medical services and supplies rendered to an injured employee with a compensable work-related injury, may be addressed by filing a request for hearing before an administrative law judge of the Commission as provided in 810:10-5-16, by mediation, or by agreement of the parties, as appropriate.

[OAR Docket #15-563; filed 6-15-15]

TITLE 810. OKLAHOMA WORKERS' COMPENSATION COMMISSION CHAPTER 20. VOCATIONAL REHABILITATION SERVICES

[OAR Docket #15-564]

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ANALYSIS:
This chapter sets forth a set of rules to implement the provisions of the Administrative Workers' Compensation Act, 85A O.S., §§ 1 et seq., which relate to vocational rehabilitation services.
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

810:20-1-1. Purpose

This Chapter implements provisions of the Administrative Workers' Compensation Act, 85A O.S., §§ 1, et seq., which relate to vocational rehabilitation services.

810:20-1-2. Definitions

In addition to the terms defined in 85A O.S., § 2, the following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"AWCA" means the Administrative Workers' Compensation Act, 85A O.S., §§ 1, et seq.

"Claimant" means a person who claims benefits for an alleged work injury, occupational disease or illness, or death pursuant to the provisions of the AWCA, 85A O.S., §§ 1, et seq.

"Commission" means the Oklahoma Workers' Compensation Commission, a designee, or an administrative law judge to whom the Commission has delegated responsibility as authorized by 85A O.S., § 21(D).

"Disabled" means rendered unable, as the result of a work-related injury, to perform work for which the person has previous training or experience.

"Gainful employment" means the capacity to perform employment for wages for a period of time that is not part-time, occasional or sporadic.

"Insurance carrier" means any stock company, mutual company, or reciprocal or interinsurance exchange authorized to write or carry on the business of workers' compensation insurance in this state, and includes an individual own risk employer or group self-insurance association duly authorized by the Commission to self fund its workers' compensation obligations.

"Pre-injury or equivalent job" means the job that the claimant was working for the employer at the time the injury occurred or any other employment offered by the claimant's employer that pays at least one hundred percent (100%) of the employee's average weekly wage.

"Vocational rehabilitation" means the process of restoring the vocational functioning of a worker who experiences a work-related injury.

"Vocational rehabilitation services" means professional services reasonably necessary during or after, or both during and after, medical treatment to enable a disabled injured employee to return to gainful employment as soon as practical. "Vocational rehabilitation services" includes vocational evaluation, retraining and job placement.

"Work-related injury" means a single event injury, cumulative trauma injury, or occupational injury or illness that arises out of and in the course of employment as provided in the AWCA.

810:20-1-3. Contested vocational rehabilitation cases

(a) If vocational rehabilitation services are not voluntarily offered by the employer or the insurance carrier, and accepted by the injured employee entitled to such services, the Commission, upon request or on its own motion, may refer the employee to a vocational rehabilitation evaluator for evaluation of the practicability of, need for, and kind of service or training necessary and appropriate to restore the employee to gainful employment.

(b) If, upon receipt of the evaluator's written report, the parties dispute the report or are unable to agree on a vocational rehabilitation plan recommended by the evaluator and commence the vocational rehabilitation services, they may attempt to resolve the dispute through mediation or forego mediation and proceed directly to a contested case hearing before the assigned administrative law judge. The administrative law judge, after notice and affording the parties an opportunity to be heard and offer evidence, may order that the services recommended by the evaluator, or such other vocational rehabilitation services as deemed appropriate by the administrative law judge, be provided at the expense of the employer or insurance carrier.

(c) Contested hearings before the administrative law judge shall be conducted as provided in Subchapter 5 of Chapter 10 of this Title.

810:20-1-4. Vocational Rehabilitation Director

To carry out the vocational rehabilitation provisions of AWCA and this Chapter, the Commission shall hire or contract for a Vocational Rehabilitation Director to oversee the vocational rehabilitation program of the Commission and focus on helping injured workers return to the work force. The Commission may hire such additional personnel, within budgetary constraints, as may be deemed necessary to assist the Vocational Rehabilitation Director.

810:20-1-5. Registry of private providers of vocational rehabilitation services

(a) The Commission shall maintain a registry of private providers of vocational rehabilitation services.

(b) To request to be included in the registry, a private provider of vocational rehabilitation services shall submit a signed and completed Commission prescribed VRS Registry form to the following address: Oklahoma Workers' Compensation Commission, Attention: HEALTH SERVICES DIVISION, 1915 North Stiles Avenue, Oklahoma City, Oklahoma 73105. Illegible, incomplete or unsigned registry forms will not be considered by the Commission and shall be returned. A copy of the VRS Registry form may be obtained from the Commission at the address set forth in this Subsection, or from the Commission's website at http://www.wcc.ok.gov.

(c) The registrant shall provide the following information, and such other additional information as may be required on the VRS Registry form:

(1) the private provider's name, business name (if applicable), business address, telephone number, and e-mail address;

(2) information describing the evaluation, assessment, assistance, placement or support services available from the private provider;

(3) the locations where the private provider renders services;

(4) a statement showing the private provider's education, training, or experience in vocational rehabilitation;

(5) information regarding any experience or education concerning workers' compensation principles of the Oklahoma workers' compensation system; and

(6) the private provider's professional credentials [e.g. Certified Rehabilitation Counselor (CRC), Certified Vocational Evaluator (CVE), Certified Disability Management Specialist (CDMS)].

(d) The registry shall be placed on the Commission's website at http://www.wcc.ok.gov.

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TITLE 810. OKLAHOMA WORKERS' COMPENSATION COMMISSION CHAPTER 25. WORKERS' COMPENSATION INSURANCE AND SELF INSURANCE

[OAR Docket #15-565]

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810:25-3-1 [NEW]
Subchapter 7. Enforcement of Workers' Compensation Insurance Requirements [NEW]
810:25-7-1 through 810:25-7-4 [NEW]
Subchapter 9. Individual Own Risk Employer Permit [NEW]
810:25-9-1 through 810:25-9-19 [NEW]
Subchapter 11. Group Self-Insurance Association Permit [NEW]
810:25-11-1 through 810:25-11-24 [NEW]
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Subchapter 7. Enforcement of Workers' Compensation Insurance Requirements [NEW]
810:25-7-1 through 810:25-7-4 [NEW]
Subchapter 9. Individual Own Risk Employer Permit [NEW]
810:25-9-1 through 810:25-9-19 [NEW]
Subchapter 11. Group Self-Insurance Association Permit [NEW]
810:25-11-1 through 810:25-11-24 [NEW]
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ANALYSIS:
This set of rules establishes procedures and standards for proof of coverage; regulation of individual own risk employers, group self-insurance associations and third-party administrators for workers' compensation purposes; and enforcement of workers' compensation insurance requirements, as authorized in the Administrative Workers' Compensation Act.
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 27, 2015:

SUBCHAPTER 1. GENERAL PROVISIONS

810:25-1-1. Purpose

This Chapter establishes procedures and standards for proof of coverage (85A O.S., § 42); regulation of individual own risk employers, group self-insurance associations and third-party administrators for workers' compensation purposes (85A O.S., §§ 22, 29, 38, 102 and 103); and enforcement of workers' compensation insurance requirements (85A O.S., § 40), as authorized in the Administrative Workers' Compensation Act, 85A O.S., §§ 1, et seq.

810:25-1-2. Definitions

In addition to the terms defined in 85A O.S., § 2, the following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Administrator" means the person designated by the supervisory board of members of a group self-insurance association to oversee the financial affairs of the association, accept service of process on behalf of the association, act for and bind the association and members in all transactions either relating to or arising out of the operation of the association.

"Advisory loss costs" means the National Council on Compensation Insurance's projections of future claims costs and loss adjustment expenses by classification code.

"Aggregate excess insurance" means an insurance product that limits a group self-insurance association's annual aggregate liability to an agreed upon amount.

"Association" or **"Group Self-Insurance Association"** means a duly qualified group self-insurance association authorized by the Commission to self fund its workers' compensation obligations.

"AWCA" means the Administrative Workers' Compensation Act, 85A O.S., §§ 1, et seq.

"Board" or **"Members' Supervisory Board"** means the supervisory board of members of an association.

"Cancellation short rate penalty" means a penalty imposed on the member for cancelling its policy before the expiration date of the policy.

"Certified audit" means a financial audit performed by a certified public accountant, accompanied by the auditor's opinion regarding the audit.

"Claims reserves" means workers' compensation claim losses expected to be paid in the future, but does not include IBNR.

"Commission" means the Oklahoma Workers' Compensation Commission, a designee, or an administrative law judge to whom the Commission has delegated responsibility as authorized by 85A O.S., § 21(D).

"Common interest" means employers engaged in the same industry or members of an Oklahoma trade association that has been in business for at least five (5) years.

"Expense constant" means a flat charge included in a workers' compensation policy to cover the costs of issuing and servicing the policy.

"Experience modifier" means a modification to premium based on the claims history of the policyholder.

"IBNR" means incurred but not reported reserves. It includes a reserve for claims that have been incurred, but not yet reported to the individual own risk employer or group self-insurance association, as applicable, and reserves for adverse loss development on known claims. "Incurred loss" means the total of the paid indemnity and medical losses plus claims reserves, reported by accident year.

"Joint and several liability" means mutual and individual responsibility of members for the liabilities of the association.

"Loss portfolio transfer" means the transfer of the liabilities of the association to an insurance carrier for an agreed upon premium.

"Member" means an individual member of an association.

"NCCI" means the National Council on Compensation Insurance, a national source for information on workers' compensation insurance, tools and services, and the provider of advisory ratemaking and statistical services in Oklahoma.

"Partnership" means a type of unincorporated business organization in which two or more individuals own the business and are equally liable for its debts.

"Pro forma financial statement" means a hypothetical financial statement showing revenues and expenses that may be recognized in the upcoming fiscal year.

"Proof of coverage" means the statutory filings of workers' compensation policy information to the NCCI.

"**Scopes Manual**" is a catalog of four-digit workers' compensation codes based on the nature of business and estimated risk to its workers.

"Self insured retention" means the individual own risk employer's or group self-insurance association's retained amount of risk under a specific excess insurance policy, before the liability is transferred to an insurance carrier.

"Sole proprietor" means an individual who is sole owner of a business that is neither a partnership nor an incorporated or limited liability company.

"Solvency" means a member whose assets are greater than its liabilities and who is capable of meeting its financial obligations to the association.

"Specific excess insurance" means an insurance product that limits the liability of an individual own risk employer or group self-insurance association specific occurrence liability to an agreed upon amount.

"Standard premium" means experience modified workers' compensation premium that has not been discounted.

"Statutory limits" means an insurance carrier's amount of liability under a specific excess insurance policy, capped at the maximum amount allowed by statute.

"TPA" or **"Third-Party Administrator"** means any person defined in 36 O.S., § 1442 of the Third-Party Administrator Act as an "administrator".

"Unearned premium" means the share of the members' premiums applicable to the unexpired portion of the policy terms.

810:25-1-3. Proceedings related to permit actions

The Commission may deny an application, refuse to issue or renew, or revoke a permit for Individual Own Risk Employer (Subchapter 9 of this Chapter), Group Self-Insurance Association (Subchapter 11 of this Chapter) or Third-Party Administrator (Subchapter 13 of this Chapter) as provided in this Chapter. Proceedings related to such Commission actions shall be governed by 810:10-5-50 on show cause hearings and the contested hearings rules set forth in Subchapter 5 of Chapter 10 of this Title.

SUBCHAPTER 3. PROOF OF COVERAGE

810:25-3-1. Proof of coverage requirements

(a) Any insurer issuing a policy to provide benefits pursuant to the AWCA, or group self-insurance association approved by the Commission, must report its statutorily required notices of insurance coverage and cancellation electronically with the Commission using the NCCI Proof of Coverage (POC) system. To do so, the insurer must elect with the NCCI to use the NCCI POC system, authorize the NCCI to make the required filings on behalf of the insurer, and report its policy information, including, but not limited to, new and renewal policies, binders, cancellations, reinstatements, and endorsements, with the NCCI in accordance with NCCI reporting requirements for the State of Oklahoma.

(b) Compliance with 85A O.S., § 42(B) is required to effect cancellation of a workers' compensation insurance policy. Notice of intent to cancel provided to NCCI or to the Commission pursuant to 85A O.S., § 42(B) does not constitute service upon the insured employer of notice of intent to cancel.

(c) An insurer shall electronically file its cancellations with the NCCI, in lieu of mailing to the Commission. The date the cancellation is electronically received by the NCCI will constitute the beginning date for the ten and thirty day waiting periods referenced in 85A O.S., § 42(B)(2) for the cancellation to become effective.

(d) A policy must be reported to the NCCI no later than thirty (30) days after the effective date of the policy. Every named insured and covered location in the State of Oklahoma must be reported as well. The date the policy is first received by the NCCI will count as the received date for purposes of

this deadline. For purposes of mid-year endorsements or jurisdictional additions to policies, the date the original policy was received by the NCCI will count as the received date for purposes of this deadline. Any insurer who fails to timely and accurately file their policies with the NCCI, shall be subject to a fine by the Commission of not more than One Thousand Dollars ($1,000.00) as determined by the Commission.

SUBCHAPTER 7. ENFORCEMENT OF WORKERS' COMPENSATION INSURANCE REQUIREMENTS

810:25-7-1. Proof of insurance

(a) Whenever the Commission has reason to believe that an employer is required to secure the payment of compensation under the AWCA and has failed to do so, the Commission may make reasonable inquiry of the employer and demand proof of current workers' compensation insurance coverage compliant with 85A O.S., § 38 or documentation substantiating the employer's exemption from coverage requirements.

(b) As authorized in 85A O.S., § 40, if no proof of insurance or exemption is provided; or the documentation offered does not substantiate a claimed exemption or is not current, valid proof of insurance in accordance with 85A O.S., § 38; or the employer fails to respond in a timely manner, the Commission shall serve on the employer a proposed judgment declaring the employer to be in violation of the workers' compensation insurance coverage requirements mandated by law and assess a monetary fine against the employer in an amount not to exceed One Thousand Dollars ($1,000.00) per day of violation.

810:25-7-2. Hearing process and consent agreements

(a) A proposed judgment issued under 810:25-7-1 may be contested by the employer as provided in 85A O.S., § 40, and is subject to a hearing process conducted pursuant to 85A O.S., § 70 through 78.

(b) An employer served with a proposed judgment, may waive its right to a contested hearing and execute a consent agreement with the Commission for a reduced penalty. The employer shall secure the payment of compensation within the meaning of 85A O.S., § 38 as a condition to executing a consent agreement. In determining the rate of reduction in penalty, consideration shall be given to the appropriateness of the penalty in light of the business of the employer charged, the gravity of the violation and the extent to which the employer charged has complied with the provisions of 85A O.S. § 38 or has otherwise attempted to remedy the consequences of the violation.

(c) The consent agreement becomes void if the employer defaults on payment under the agreement or if the agreement was obtained by fraud or misrepresentation of a material fact.

(d) The Commission may institute collection proceedings independently or in District Court, including, but not limited to, an asset hearing, garnishment of income and wages, judgment lien against personal and/or business properties, upon any penalties becoming final under the provisions of 85A O.S. § 40.

810:25-7-3. Interference of duty

No person shall interfere with, obstruct or hinder by force or otherwise, the Commission or its personnel while in the performance of their duties, or refuse to properly answer questions asked by the Commission or its personnel, pertaining to the Commission's enforcement of the workers' compensation insurance coverage requirements mandated by the AWCA.

810:25-7-4. Injunctive relief against a noncompliant employer

As authorized in 85A O.S., § 40, if an employer fails to comply with workers' compensation insurance coverage requirements or pay any civil penalty assessed against it after a judgment issued under 810:25-7-1 becomes final, the Commission may pursue relief in district court to enjoin the employer from engaging in further employment during the period of noncompliance.

SUBCHAPTER 9. INDIVIDUAL OWN RISK EMPLOYER PERMIT

810:25-9-1. Application for Individual Own Risk Employer Permit

(a) To request a permit to self fund its workers' compensation obligations as authorized in 85A O.S., § 38(A)(3), an employer shall:

(1) Submit a signed and completed Application for Individual Own Risk Employer Permit on a form prescribed by the Commission, together with all required supporting documentation and attachments completed in their entirety, at least sixty (60) days before the desired effective date of the permit, to the following address: Oklahoma Workers' Compensation Commission, Attention: INSURANCE DIVISION, 1915 North Stiles Avenue, Oklahoma City, Oklahoma 73105. The application shall be signed under penalty of perjury by an authorized representative of the employer. Illegible, incomplete or unsigned applications will not be considered and shall be returned. A copy of the application form may be obtained from the Commission at the address set forth in this Paragraph, or from the Commission's website;

(2) Pay to the Commission a nonrefundable application fee of One Thousand Dollars ($1,000.00) with the Application for Individual Own Risk Employer Permit;

(3) Submit its current audited financial statement or financial statement signed by two (2) company executives, including balance sheet, income statements and notes, and its financial statement for the previous year. Renewal applicants may request waiver of the requirement for financial statements;

(4) Submit the employer's most recent available interim financial statements; and

(5) Provide such additional records and information germane to the application as may be required by the Commission.

(b) The application shall be reviewed by the Commission's Insurance Division. If the application is determined to be sufficient, the Division will issue a permit licensing the applicant to carry its own risk without compensation insurance, for a period of one year. If the application is determined to be deficient, the Division will notify the applicant thereof, stating the reasons for the deficiency. If the deficiency cannot be resolved within the stated time frame from the Division, the application will be denied.

(c) An applicant may withdraw its pending Application for Individual Own Risk Employer Permit at any time. Once withdrawn, no further action regarding the application will be taken by the Commission and the Commission's file on the application request will be considered closed.

(d) The Commission's Insurance Division may extend or amend an existing permit, in its discretion, if necessary for the completion of a renewal application or a change in facts of the permit.

810:25-9-2. Minimum eligibility requirements

(a) Unless waived as provided in Subsection (b) of this Section and except for governmental entities subject to 810:25-9-11, to be eligible for an Individual Own Risk Employer Permit, the applicant must:

(1) have been continuously engaged in business for not less than three (3) years immediately preceding the Application for Individual Own Risk Employer Permit;

(2) have at least one hundred (100) employees (all states included); and

(3) have at least One Million Dollars ($1,000,000.00) in net assets.

(b) An applicant that does not satisfy the minimum eligibility requirements of Subsection (a) of this Section, may petition the Commission for a waiver of the requirements. The Commission may waive some or all of the requirements for good cause, subject to any security deposit and/or excess insurance requirements determined by the Commission to be appropriate should the permit be approved.

810:25-9-3. Financial information review

(a) Factors used to determine an applicant's financial ability to pay compensation to its employees include:

(1) Profit and loss history;

(2) Profitability, solvency, debt and liquidity ratios;

(3) Cash flow;

(4) Ratio of net worth to annual workers' compensation losses.

(5) Source and reliability of financial information;

(6) Excess insurance coverage;

(7) Number of employees;

(8) Workers' compensation loss history;

(9) Estimated manual premium; and

(10) Other relevant factors as determined by the Commission.

(b) An Application for Individual Own Risk Employer Permit may be denied if the employer cannot demonstrate its ability to pay its compensation obligations.

810:25-9-4. Security deposit

(a) As a condition to self fund its workers' compensation obligations, an employer approved as an individual own risk employer shall post acceptable security with the Commission, in such form and amount as determined by the Commission.

(b) Acceptable forms of security, are:

(1) An irrevocable letter of credit issued by a financial institution, whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC). The financial institution must be approved in advance by the Commission. The letter of credit must be on a form prescribed by the Commission, include an automatic renewal clause, and cannot be non-renewed without at least sixty (60) days' prior written notice to the Commission. The letter of credit shall be made payable to the Commission. The Commission may make demand and collect on the posted letter of credit in whole or in part, in the case of actual or imminent default of the employer to pay compensation liabilities, or the cancellation of the letter of credit without an adequate replacement;

(2) A surety bond from an admitted or surplus lines insurer with an AM Best Rating of B+ or better, and on a form prescribed by the Commission; and

(3) Such other forms of security approved by the Commission.

(c) The amount of the security deposit shall be determined by the Commission after evaluating the financial ability of the individual own risk employer to pay its compensation and workers' compensation exposure. The determination may include consideration of a factor for IBNR for the prior claims' years and the permit year applied for. The Commission may require an actuarial report of estimated claims reserves and IBNR from a Commission approved actuary. The minimum amount of the security required in Subsection (b)(1) or (b)(2) of this Section shall be the greater of:

(1) One Hundred Thousand Dollars ($100,000.00); or

(2) The employer's average yearly incurred workers' compensation losses for three (3) calendar or fiscal years immediately preceding the application date; or

(3) If the company is a renewal applicant, the amount of outstanding claims reserves for the employer, as determined by an approved third-party administrator or benefits administrator. Outstanding reserves submitted by an approved self-insured entity or organization must use a standardized approach to assessing future exposure. All future liabilities should be reserved to at least the "most probable outcome." The Commission defines "most probable outcome" as the expected amount of money to cover a claim based upon information known at the time of the report. An organization or entity that discounts either future indemnity or medical payouts based upon present value or a reduced life expectancy must identify said claims and acknowledge the potential future value.

(d) The security required of an individual own risk employer, and any proceeds thereof collected upon demand, including any interest thereon, shall be maintained by the Commission as provided in the AWCA until each claim for workers' compensation benefits is paid, settled or lapses under

the AWCA, and costs of administration of those claims are paid, or until the security is released by the Commission as provided in 810:25-9-19.

810:25-9-5. Renewals

The criteria for renewal of an individual own risk employer permit shall be the same as that for a new applicant.

810:25-9-6. Effectiveness of previously authorized permits, security deposits and guaranties

(a) Individual own risk employer permits previously authorized by the Workers' Compensation Court Administrator pursuant to 85 O.S., § 351 and in effect on January 31, 2014 shall remain in full force and effect for the duration of the permit term thereafter, unless voluntarily terminated by the own risk employer or revoked by the Commission.

(b) All security deposits and parental guaranties posted by an individual own risk employer with the Workers' Compensation Court Administrator pursuant to 85 O. S., § 351 before February 1, 2014 as a condition for the own risk employer to self fund its workers' compensation obligations, which are maintained by the Court Administrator and in effect on January 31, 2014, shall remain in full force and effect, pursuant to their respective terms, on and after February 1, 2014, notwithstanding assumption by the Commission of the Court Administrator's regulatory responsibilities regarding individual own risk employers beginning February 1, 2014. At that time, the Commission shall be considered the successor entity to the Workers' Compensation Court Administrator in all respects regarding the security deposit and parental guaranty, with full power and authority in its own name to make demand and collect thereon in the same manner and to the same extent as and if the Commission were the Court Administrator. The Commission may require an individual own risk employer to post an adequate replacement security deposit or parental guaranty, or both, made payable to the Commission.

810:25-9-7. Claims administration

An individual own risk employer must use a third-party administrator licensed by the Commission, or an in-house benefits administrator approved by the Commission, to adjust its workers' compensation claims. The in-house benefits administrator must hold a current and unrestricted workers' compensation adjuster license for the State of Oklahoma.

810:25-9-8. Excess insurance

The Commission may require an individual own risk employer to provide proof of excess coverage with such terms and conditions as is commensurate with the employer's ability to pay the benefits required by the provisions of the AWCA. Such excess insurance must be from an admitted or surplus lines insurer with an AM Best Rating of B+ or better. The self insured retention must be approved by the Commission, and the excess carrier's limits of liability must be statutory. An amount less than statutory limits must be approved in advance by the Commission. Aggregate excess insurance may be required by the Commission if necessary.

810:25-9-9. Additional named insureds

(a) Subsidiaries, subdivisions, and affiliated employers may be included on the individual own risk employer permit as additional named insureds. A schedule listing the additional employers' names, addresses and federal employer identification numbers (FEIN) must be submitted. The additional employers' workers' compensation losses, payroll and employee counts must be aggregated with the primary permit holder and included on the application. A guaranty from the primary permit holder for these additional employers must be submitted in accordance with 810:25-9-10.

(b) A subsidiary may apply for a separate individual own risk employer permit from its parent company if desired, but must meet all qualifications of this Subchapter.

810:25-9-10. Parental guaranty

(a) A parental guaranty, on a form approved by the Commission, must be submitted for any additional named insured included on the permit.

(b) If the individual own risk employer has a parent company that is not included on the permit, and the employer is relying on its parent company's financial statements to apply, then a parental guaranty, on a form approved by the Commission, must be submitted from the parent company for its subsidiary.

810:25-9-11. Governmental entities

(a) Governmental entities may carry their own risk without insurance as provided in 85A O.S. § 107. They must apply using the same application form as private employers, and submit the same required documents, with the exception of interim financial statements. Governmental entities will be exempted from posting a security deposit if they make an appropriation into a segregated workers' compensation fund. The amount of the appropriation must be at least the entity's average amount of workers' compensation losses paid during the preceding three (3) years.

(b) Certain public trust employers will be required to post a security deposit in lieu of an appropriation. The Commission will make this determination at the time of application review.

810:25-9-12. Interim monitoring

(a) An individual own risk employer may be placed on quarterly reporting by the Commission for purposes of monitoring its financial condition and workers' compensation loss history. Companies on quarterly reporting shall submit financial statements and loss runs to the Commission within sixty (60) days after the end of each of their fiscal quarters. An adjustment in the individual own risk employer's security deposit may be required after the Commission reviews the quarterly results.

(b) The Commission reserves the right to audit any insureds that they have determined a concern exists with an insureds

ability to meet its financial obligations. These audits will focus on the reserve estimates and ensure that all claims are reserved to at least the "most probable outcome". The Commission defines "most probable outcome" as the expected amount of money to cover a claim based upon information known at the time of the report. The costs of these audits will be borne by the individual own risk employer and/or association.

810:25-9-13. Notification of changed status

An individual own risk employer must notify the Commission of any change in its financial condition or ownership in the interim period between applications, such as a net financial loss, which may impact the employer's financial ability to pay its compensation. Failure to notify the Commission in a timely manner may result in revocation of the own risk permit. If there is a change in majority ownership of an individual own risk employer, the own risk privilege granted to the employer shall be at the discretion of the Commission and the new entity shall be required to qualify under this Subchapter.

810:25-9-14. Revocation of permit

(a) The individual own risk employer permit may be revoked by the Commission at any time upon reasonable notice and hearing, for good cause shown, including, but not limited to, failure to comply with the rules of the Commission; failure to pay compensation when due; and financial impairment of the employer which has or will bring the employer below the minimum net worth requirement of 810:25-9-2.

(b) The employer is expected to secure its workers' compensation obligations at all times as provided by law, notwithstanding the revocation. Failure to do so may subject the employer to sanctions pursuant to 85A O.S., § 40 and enforcement proceedings as provided in Subchapter 7 of this Chapter.

810:25-9-15. Assessments

An individual own risk employer must pay all applicable Multiple Injury Trust Fund assessments (85A O.S., § 31) and all Self Insurance Guaranty Fund assessments (85A O.S., § 98), when due and timely report payment thereof to the Commission as prescribed by law. Failure to do so is grounds for revocation of the individual own risk employer permit, imposition of fines by the Commission, or both revocation and fines.

810:25-9-16. Medicare reporting

An individual own risk employer shall comply with Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA), including all MMSEA workers' compensation reporting requirements, to the extent and as provided by Federal law.

810:25-9-17. Designation of service agent

An individual own risk employer must designate a service agent to receive service of notice. The designation must be on a form prescribed by the Commission and filed with the Commission as provided in 810:10-1-11.

810:25-9-18. Former own risk employers; continuing requirements

(a) A former individual own risk employer remains responsible for:

(1) Paying all workers' compensation obligations incurred during its period as an approved individual own risk employer;

(2) Reporting its workers' compensation losses on an annual basis to the Commission, on a form prescribed by the Commission;

(3) Paying Self Insurance Guaranty Fund assessments as provided in 85A O.S., § 98; and

(4) Maintaining an adequate security deposit with the Commission.

(b) A former individual own risk employer is not liable for Multiple Injury Trust Fund assessments for periods beyond the last quarter in which it was an active own risk employer.

810:25-9-19. Release of security deposit

(a) A security deposit posted with the Commission as required by 810:25-9-4 must remain in place, at its existing amount, for two years after an individual own risk employer voluntarily leaves self-insurance. The Commission may review the adequacy or excess of the security deposit in advance of the own risk permit termination date and require modifications to the security deposit amount as necessary.

(b) A security deposit may be reduced at the Commission's discretion after the two year waiting period upon application by the employer and submission of current financial statements and workers' compensation loss runs.

(c) A security deposit may be released at the Commission's discretion upon application by the employer and submission of current financial statements and a signed and notarized affidavit, from a duly authorized officer of the employer, affirming that all workers' compensation claims incurred under the own risk permit of the employer have been permanently closed, and the statute of repose for reopening the claims has passed.

(d) The security deposit shall be released in full by the Commission within a reasonable period following receipt of proof of an assumption agreement or equivalent, from a licensed insurance carrier, whereby the claims liability under the individual own risk employer permit is transferred to and assumed by the insurance company. The assumption agreement or equivalent may be entered into before expiration of the two year waiting period provided in Subsection (a) of this Section.

SUBCHAPTER 11. GROUP SELF-INSURANCE ASSOCIATION PERMIT

810:25-11-1. Application

(a) Two or more employers having a common interest, as defined in Section 810:25-1-2, may be approved by the Commission as a group self-insurance association for the purpose of entering into agreements to pool their liabilities under the AWCA. Such application shall be made on a form prescribed

by the Commission and shall be verified by the oath of at least two members of the board or the administrator.

(b) The application shall be reviewed by the Commission's Insurance Division. If the application is determined to be sufficient, the Division will issue a permit licensing the applicant to act as a group self-insurance association, for a period of one year. If the application is determined to be deficient, the Division will notify the applicant thereof, stating the reasons for the deficiency. If the deficiency cannot be resolved within the stated time frame from the Division, the application will be denied.

(c) The association's application may be approved if the Commission has satisfactory proof of:

(1) The solvency of each member of the association;

(2) The financial ability of each employer to meet its obligations as a member;

(3) The ability of the association to pay or cause to be paid the compensation in the amount and manner and when due as provided in the AWCA;

(4) A minimum collective net worth of the members of at least Two Million Dollars ($2,000,000.00);

(5) Standard premium of Five Hundred Thousand Dollars ($500,000.00) at the start up date of the association; and

(6) The common interest of the members as defined in 810:25-1-2.

(d) Any application so approved shall be subject to all conditions and requirements of this Subchapter. In order to determine continued compliance with the law and this Subchapter, the application shall be reviewed on an annual basis or whenever deemed necessary by the Commission.

(e) An applicant may withdraw its pending Application for Group Self-Insurance Association Permit at any time. Once withdrawn, no further action regarding the application will be taken by the Commission and the Commission's file on the application request will be considered closed.

(f) The Commission's Insurance Division may extend or amend an existing permit, in its discretion, if necessary for the completion of a renewal application or a change in facts of the permit.

810:25-11-2. Additional application requirements

The Application for Group Self-Insurance Association Permit provided for in 810:25-11-1 shall be submitted at least sixty (60) days before the desired effective date, bound in a hardcover notebook, and accompanied by all of the following:

(1) A One Thousand Dollar ($1,000.00) nonrefundable application fee, made payable to the Commission;

(2) A sample of the members' indemnity agreement and power of attorney, as required by 810:25-11-15, binding the association and each member thereof, jointly and severally, to comply with the provisions of the AWCA;

(3) An executed copy of the application of each employer for membership in the association. The application must be on a form approved by the Commission, include an indemnity agreement and power of attorney executed by the employer, a joint and several liability agreement executed by the employer, and a current balance sheet;

(4) A pro forma financial statement of the association, showing the estimated revenues and expense the first fiscal year of the association;

(5) A statement of the collective net worth of the members of the association;

(6) The estimated standard and discounted premium each association member will pay during the first fiscal year of the association;

(7) A listing of the type, amount and eligibility requirements of discounts available for the association members;

(8) Projected expenses for the association for the first fiscal year, in dollar amount and a percentage of the standard premium to be generated;

(9) Specific and aggregate excess insurance binders for the first fiscal year;

(10) Underwriting guidelines that will be used by the association;

(11) A copy of the association's bylaws and any other governing instruments of the proposed association;

(12) A designation of the initial members' supervisory board and of the administrator of the association, including properly executed biographical affidavits for each;

(13) The name and contact information of the association's TPA, including a copy of the contract between the association and the TPA;

(14) A copy of all fidelity bonds and errors and omissions policies secured by the association, its administrator, its TPA, and other organizations providing services;

(15) Copies of all marketing materials to be utilized by the association;

(16) If the TPA does not provide safety, marketing, underwriting, or accounting services, the name or names of the organization or organizations who will, and a copy of the contract between the association and these organizations;

(17) A designation of the association's auditing and actuarial firms; and

(18) A list of workers' compensation rates to be charged to its members, broken down by classification code. The rates should be calculated in accordance with 810:25-11-8.

810:25-11-3. Approval of new members of the association

A new membership may not become effective without Commission approval. All applications for membership, in a form approved by the Commission, shall be filed with the Commission. The application shall include evidence of the execution of the indemnity agreement, power of attorney, and joint and several liability agreement, as required by 810:25-11-15, with signed approval of the applicant by the association, and shall be accompanied by a current balance sheet and income statementof the association and the applicant. The Commission shall approve new members upon finding that the applicant is solvent, that the applicant has the financial ability to meet its obligations as a member, and proof that the applicant is in compliance with the legal requirements specified in this subchapter.

810:25-11-4. Investment and reserve requirements

(a) The members' supervisory board of an association may, in its discretion, invest its funds in either of the following investments:

(1) Savings accounts or certificates of deposit in a Federal Deposit Insurance Corporation (FDIC) insured institution; or

(2) Direct obligations of the United States Treasury, either as notes, bonds, or bills that are backed by the full faith and credit of the United States Government.

(b) An association shall maintain unearned premium and claims reserves computed in a matter acceptable to the Commission.

810:25-11-5. Financial and related reports

(a) On or before the one hundred twentieth (120) day after the end of its fiscal year, every association shall file a certified audit of its annual financial condition prepared by a certified public accountant acceptable to the Commission. Audits must include a complete breakdown of all monies collected by the association, including the amount discounted and a complete breakdown of expenses. The audit should footnote and analyze completely all paid claims and claims reserved but not reported. A footnote must also be included to indicate if payments to contracted parties are in accordance with current contracts.

(b) An interim financial statement shall be filed sixty (60) days following the midyear fiscal anniversary of the association. This statement need not be audited, but should reflect pertinent data regarding income, claims reserves and IBNR, standard premium, discounts, interest earned, expense constant fees, as well as a breakdown of the association's expenses.

(c) An actuarial report of the association's estimated reserves must be filed with the certified financial audit required in Subsection (a) of this Section. The reserves recommended by the actuarial report must be used by the association. If the actuary gives a range of reserves, the association should use the midrange or higher. The actuary completing the report should be a member in good standing with the Casualty Actuarial Society.

810:25-11-6. Excess insurance

(a) A group self-insurance association must obtain specific and aggregate excess insurance from an admitted or surplus lines insurer with an AM Best Rating of B+ or better. The self insured retention must be approved by the Commission and the excess carrier's limits of liability must be statutory. An amount less than statutory limits must be approved in advance by the Commission. The attachment point of the aggregate excess insurance should not exceed one hundred percent (100%) of an association's estimated standard premium, unless authorized by the Commission.

(b) The policy required in Subsection (a) of this Section must not be terminable for any reason except upon thirty (30) days' written notice by certified mail or overnight courier to the Commission and the association.

(c) Copies of the complete policy required by Subsection (a) of this Section must be filed with the Commission.

(d) Under certain conditions, an irrevocable letter of credit may be presented in lieu of aggregate excess insurance. The form and amount of the letter of credit must be approved by the Commission.

(e) Two or more group self-insurance associations may pool together to purchase aggregate excess insurance, upon application and approval of the Commission and the excess carrier.

810:25-11-7. Operating expenses

The maximum operating expenses of the association should not exceed thirty-three percent (33%) of the standard premium. These expenses include the following:

(1) Administrator's fee;

(2) TPA fee;

(3) Marketing fees, billing and collection fees, and sales commissions;

(4) General operating expenses, including audits and actuarial reports;

(5) Cost of excess insurance; and

(6) Any other fees approved by the Commission.

810:25-11-8. Rates, experience modifications, and discounts

(a) All workers' compensation rates to be charged to its members must be approved in advance by the Commission. The rates should be based on the latest advisory loss costs provided by the National Council on Compensation Insurance (NCCI), must be actuarially certified, and must be sufficient to cover the association's estimated losses and expenses for the upcoming year. The actuary's report must accompany the rate request to the Commission. The actuary must be a member in good standing with the Casualty Actuarial Society.

(b) Experience modifiers for the members must be promulgated by the NCCI an annual basis.

(c) All premium discounts must be approved by the Commission. The aggregate of all discounts allowed to a member cannot exceed twenty-five percent (25%) of the member's standard premium. Types of acceptable discounts include:

(1) Prompt Pay;

(2) Safety program;

(3) Premium volume;

(4) Experience rated; and

(5) Other discounts approved by the Commission.

(d) Changes in discounts must be approved by the Commission.

810:25-11-9. Premium deposits

On the association's effective date, the premium deposit of at least twenty-five percent (25%) of the first year's discounted premium payable by each member of the association, shall have been paid into a designated depository, which shall certify receipt of same to the Commission. The balance of the first year's premium shall be paid, either in quarterly or monthly installments at the discretion of the board, no later than the end

of the ninth month of the association's fiscal year. For subsequent years, the board of each association shall determine the amount of advance deposit required, or if the deposit shall remain permanent, with distribution only after termination of the membership and all premium audits and adjustments completed, and all premiums due paid in full. The Commission may require an association to make its deposits permanent.

810:25-11-10. Surplus distributions

(a) Any surplus monies may be declared refundable by the board, and the amount of such declaration shall be a fixed liability of the association at the time of the declaration. The date and manner of the distribution shall be declared by the board. The manner of the distribution shall be in accordance with the association's bylaws. The board shall submit the distribution request to the Commission, with all supporting documents. The payment of any distribution shall not be made without Commission approval.

(b) The following distribution guidelines shall apply:

(1) Distributions from profitable years can be assigned to unprofitable years;

(2) Full and final distributions of all surplus remaining for a particular year cannot be made until all claims incurred during that year are permanently closed;

(3) Distributions will not be approved if the association has an overall deficit, or the distribution will place the association in an overall deficit; and

(4) Distributions shall be made in a equitable manner as provided in the association's bylaws.

810:25-11-11. Deficits and assessments

(a) If the association incurs a deficit for a particular year, the board must address the issue with the Commission. If the loss is significant, the board may be required to increase rates or to reduce expenses and discounts to return the group to profitability. If the cumulative net worth of the association is in a deficit position, the board may be required to assess its membership to make up the deficit. If an assessment is made, it shall be done in an equitable manner in accordance with the association's bylaws.

(b) The following assessment guidelines shall apply:

(1) Assessments must be declared by the board, and approved by the Commission. On the date the declaration is made, the assessment can be recorded as a receivable on the association's financial statements;

(2) A member cannot be assessed for a deficit in a fiscal year it was not a member;

(3) The assessment can be payable over a thirty-six (36) month period, or shorter time frame, if desired by the board or required by the Commission; and

(4) Any member who does not pay its assessment when due, shall be cancelled from the group with ten (10) days' notice to the member and the Commission.

810:25-11-12. Renewal applications

(a) An application for renewal of a group self-insurance association permit shall be submitted at least sixty (60) days before the expiration date of the existing permit, bound in a hardcover notebook, and accompanied by all of the following:

(1) A One Thousand Dollar ($1,000.00) nonrefundable application fee, made payable to the Commission;

(2) A sample of the members' indemnity agreement and power of attorney, as required by 810:25-11-15, binding the association and each member thereof, jointly and severally, to comply with the provisions of the AWCA;

(3) A copy of the association's current audited financial statements, unaudited midyear statements, and all current actuarial reports;

(4) An attestation from the administrator or board that the collective net worth of the members of the association exceeds Two Million Dollars ($2,000,000.00);

(5) The estimated standard and discounted premium each association member will pay during the next fiscal year of the association;

(6) A listing of the type, amount and eligibility requirements of discounts available for the association members, including scheduled discounts;

(7) Projected expenses for the association for the next fiscal year, in dollar amount and a percentage of the standard premium to be generated;

(8) Specific and aggregate excess insurance binders for the next fiscal year, and copies of the policies for the current year;

(9) Underwriting guidelines that are used by the association;

(10) A copy of the association's bylaws and any other governing instrument;

(11) A designation of the members' supervisory board and of the administrator of the association;

(12) The name and contact information of the association's TPA, including a copy of the contract between the association and the TPA;

(13) A copy of all fidelity bonds and errors and omissions policies secured by the association, its administrator, its TPA, and other organizations providing services;

(14) Copies of all marketing materials utilized by the association;

(15) If the TPA does not provide safety, marketing, underwriting, or accounting services, the name or names of the organization or organization who does, and a copy of the contract between the association and these organizations;

(16) A list of workers' compensation rates to be charged to its members, broken down by classification code. The rates should be calculated in accordance with 810:25-11-8;

(17) Copies of the minutes of all board meetings held during the current year;

(18) A report of the premiums paid and losses incurred by each member of the association during the current fiscal year;

(19) Affidavit from the chairman of the board that the association is and has been in full compliance with the rules of the Commission during the current fiscal year;
(20) Confirmation of proof of coverage filings made with the NCCI; and
(21) A listing of investments currently held by the association.
(b) The renewal application shall be reviewed and processed by the Commission in the same manner as the original application.

810:25-11-13. Security deposit

A group self-insurance association may be required to post an irrevocable letter of credit with the Commission, in an amount determined by the Commission. The actual amount of the letter of credit will be determined by the Commission after evaluating the financial status of the association, including the following:
(1) The association's available surplus;
(2) The gap between the amount of premium estimated to be collected and the attachment point of the aggregate excess insurance policy; and
(3) The financial strength of the collective membership.

810:25-11-14. Letter of credit requirements

(a) An irrevocable letter of credit authorized pursuant to 810:25-11-6 or required pursuant to 810:25-11-13 must be issued by a state or national chartered bank, whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC). The bank must be approved in advance by the Commission. The letter of credit must be on a form prescribed by the Commission, include an automatic renewal clause, and cannot be non-renewed without sixty (60) days' prior written notice to the Commission. The letter of credit shall be made payable to the Commission. The Commission may make demand and collect on the posted letter of credit in whole or in part, in the case of actual or imminent default of the association to pay compensation liabilities, or the cancellation of the letter of credit without an adequate replacement.
(b) All letters of credit referenced in Subsection (a) of this Section, and any proceeds thereof collected upon demand, including any interest thereon, shall be maintained by the Commission as provided in the AWCA until each claim for workers' compensation benefits is paid, settled or lapses under the AWCA, and costs of administration of those claims are paid, or until otherwise released by the Commission.

810:25-11-15. Indemnity agreements and power of attorney

(a) Every member of a group self-insurance association shall execute an indemnity agreement and power of attorney which shall set forth the rights, privileges and obligations of the member and the association and the powers and duties of the administrator. Such indemnity agreement and power of attorney shall be subject to the approval of the Commission and shall contain in substance the following:
(1) An agreement on a form approved by the Commission, under which each member agrees to assume and discharge, jointly and severally, liability under the AWCA of any and all employers party to such agreement;
(2) Provisions requiring that the members' supervisory board designate and appoint an administrator empowered to accept service of process on behalf of the association and authorized to act for and bind the association and members in all transactions either relating to or arising out of the operation of the association;
(3) Provisions for the right of substitution of the administrator and revocation of the power of attorney and right hereunder; and
(4) Provisions that clearly state all of the coverages of the policy.
(b) One copy of the indemnity agreement and power of attorney shall remain in the member's possession at the time the application for membership is made. One copy must be filed with the Commission.
(c) An affidavit of acknowledgment of joint and several liability, on a form approved by the Commission, must accompany the indemnity agreement and power of attorney, one copy shall remain with the member, and one copy must be filed with the Commission.

810:25-11-16. Administrator

The members' supervisory board must designate an administrator to administer the financial affairs of the association, who shall furnish a fidelity bond with the association as obligee, in amount sufficient to protect the association against the misappropriation or misuse of any monies or securities. The amount of the bond shall be determined by the Commission and evidence of such shall be filed with the Commission.

810:25-11-17. Third-party administration

(a) The association must contract with a third party to provide claims adjusting, underwriting, industrial safety engineering, marketing and accounting functions. More than one organization can be contracted with to provide these services. The company providing the claims adjusting and marketing must be licensed by the Commission.
(b) All copies of contracts between the association and any organization providing services to association shall be filed with the Commission. Any change in contract must be filed with the Commission ten (10) days' before the effective date.
(c) Any contract with a TPA for claims adjusting must state the TPA agrees to handle all claims incurred to their conclusion, unless approval to transfer the claims is obtained from the Commission before such transfer.
(d) A company providing marketing services to a self-insurance program must be approved by the Commission's Insurance Division. The company requesting approval must submit to the Commission's Insurance Division all marketing material prior to being utilized by an association.

810:25-11-18. Termination of members

A member of an association may not be terminated unless at least ten (10) days' written notice has been given to the member and the Commission if the termination is due to nonpayment of premium or assessment. If the cancellation is for other reasons, then the member may not be terminated unless at least thirty (30) days' written notice is given to the member and the Commission.

810:25-11-19. Revocation

(a) The group self-insurance association permit may be revoked by the Commission at any time upon reasonable notice and hearing, for good cause shown, including, but not limited to, failure to comply with the rules of the Commission; failure to pay compensation when due; and financial impairment of the association which has or will make the association insolvent. The association will be given forty five (45) days to cancel its members and for the members to obtain alternative workers' compensation coverage authorized by law.

(b) The association's members are expected to secure their workers' compensation obligations at all times as provided by law, notwithstanding the revocation. Failure to do so may subject the member to sanctions pursuant to 85A O.S., § 40 and enforcement proceedings as provided in Subchapter 7 of this Chapter.

810:25-11-20. Examination of association

Whenever the Commission deems it expedient for the protection of the interests of the people of the State of Oklahoma, it may make or direct to be made an examination into the affairs of any association, member, marketing firm, or TPA approved in the State of Oklahoma.

810:25-11-21. Responsibilities of members' supervisory board

(a) The members' supervisory board shall be responsible for holding and managing the assets and directing the affairs of an association and shall be elected in the manner prescribed by the association's governing instruments. All board members must be members of the association. A board member shall not be an owner, officer, or employee of any entity under contract with the association.

(b) The board shall supervise the finances of the association and the association's operations to such extent as may be necessary to assure conformity with this Subchapter, the members' indemnity agreement and power of attorney, and the association's governing instruments. The members' supervisory board shall take all necessary precautions to safeguard the assets of the association, including, but not limited to the following:

(1) Monitoring the financial condition of each member of the association, and doing all other acts to the extent necessary to assure that each member continues to be able to fulfill the obligations of membership. The board shall promptly report to the Commission any grounds for believing that either a change in any member's financial condition, withdrawal of a member, or any other circumstances might affect the association's ability to meet its obligations;

(2) Retaining control of all monies either collected or disbursed by and for the association. All loss funds of any type shall remain in the custody of the board or the authorized administration; provided, however, if a revolving fund is established for payment of compensation due, and other related expenses, for the use of any authorized TPA, the TPA shall furnish a fidelity bond covering its employees, with the association as obligee, in an amount sufficient to protect all monies placed in the revolving fund;

(3) Having the accounts and records of the association audited annually or at any time the Commission deems necessary. The Commission may prescribe a uniform accounting system to be used by group self-insurance associations and/or TPAs and the type of audits to be made in order that it may determine the solvency of the association. Copies of the audit shall be filed with the Commission within one hundred twenty (120) days after the close of the fiscal year. An association's fiscal year may not be changed without prior Commission approval;

(4) Active efforts to collect delinquent accounts resulting from any unpaid premiums by members. Any member of an association who fails to pay the required premiums after due notice shall be ineligible for the self-insurance privilege until such past due account, including cost of collection, has been paid;

(5) The members' supervisory board shall hire legal counsel when deemed to be necessary to represent the membership in contested workers' compensation matters. Board members will be responsible for monitoring fees paid to legal counsel;

(6) Neither the members' supervisory board nor the administrator shall utilize any of the monies collected as premiums for anything unrelated to the purposes of the group self-insurance association, to workers' compensation, or to securing the members' liability under the AWCA. Furthermore, they shall be prohibited from borrowing any monies from the association without advising the Commission of the nature and purpose of the loan and obtaining the Commission's approval. The board may, at its discretion, invest its funds in accordance with 810:25-11-4;

(7) The members' supervisory board shall assure that the administrator of the association and all records necessary to verify the accuracy and completeness of records submitted to the Commission, are maintained at a central location within the State of Oklahoma;

(8) The members' supervisory board and the Commission should be notified in writing of all disputes regarding proper rate classification codes. The Commission may appoint a professional to review the Scopes Manual to determine the applicable classification code. The expense of the professional service will be paid for by the association;

(9) The members' supervisory board shall notify the Commission at least ten (10) days before all board meetings. Copies of the minutes of all board meetings shall be

submitted to the Commission within thirty (30) days of the date of the meeting;

(10) The Commission must be notified within ten (10) days of any change in the association's board. Any new board member must submit to the Commission a properly executed biographical affidavit; and

(11) The members' supervisory board may designate a marketing firm or individuals to market the association's program. The marketer or marketers of an association's program must be either licensed insurance agents in the State of Oklahoma, or approved by the Commission. All marketing materials must be submitted to the Commission before being utilized by an association. Each sales interview must include a clear presentation of a proposed member's joint and several liability.

810:25-11-22. Miscellaneous operating guidelines

(a) The assets of a group self-insurance association and control thereof are property of the members under the direction of its supervisory board members.

(b) The association's standard premium by the end of its first fiscal year and for all subsequent fiscal years shall not be less than One Million Dollars ($1,000,000.00);

(c) Any change in the bylaws and/or contracts with the association must be filed promptly with the Commission.

(d) Any false or misleading solicitation of membership in the group self-insurance association may be cause for cancellation of approval of the TPA, marketing organization, and the group self-insurance association as a whole.

(e) Any recalculation of premium, due to experience modification, cannot be retroactive more than one hundred eighty (180) days.

(f) A cancellation short rate penalty may not be changed if the member has been a member of the association at least twelve (12) months before the cancellation.

(g) Any trade membership dues must be collected separate from the group self-insurance association. Services provided by the trade association must be fully explained to members joining the trade association.

(h) A separate safety program may not be sold to a member by a marketer of the association.

(i) At least ninety percent (90%) of all expense constant fees collected shall be deposited directly into the association's general revenues. No portion of these fees may be paid to any group or individual contracted with the association in an amount greater than that of the normal sales commission allowed.

(j) All billing and receiving will be supervised and reviewed by the TPA and the administrator of the association. All monies must be deposited promptly in the association's designated Oklahoma depository account.

(k) Wrongfully changing employee classification codes or rates are grounds for immediate revocation of the approval of the TPA, marketing organization, and the group self-insurance association as a whole.

(l) The members' supervisory board can be reimbursed its travel and incidental expenses incurred during its services as a member of the board. Board members may not be paid a salary.

(m) A group self-insurance association shall comply with Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA), including all MMSEA workers' compensation reporting requirements, to the extent and as provided by Federal law.

810:25-11-23. Winding down of association's affairs

(a) The members' supervisory board, the administrator, and the TPA shall remain in place if the association relinquishes its approval, and shall wind down the affairs of the association. A change in board membership, administrator, or TPA, must be approved by the Commission.

(b) A loss portfolio transfer or equivalent may be obtained by the association to transfer its liability to a licensed insurance company.

(c) Annual financial statements, as required in 810:25-11-5, will still be required once an association relinquishes its approval, unless otherwise approved by the Commission.

(d) Distributions of surplus, as referenced in 810:25-11-10, may be made upon application to the Commission. A full and final release of all funds from the association will not be allowed absent compliance with the criteria specified in 85A O.S., § 102(B).

810:25-11-24. Effectiveness of previously authorized permits and security deposits

(a) Group self-insurance association permits previously authorized by the Workers' Compensation Court Administrator pursuant to 85 O.S., § 351 and in effect on January 31, 2014 shall remain in full force and effect for the duration of the permit term thereafter, unless voluntarily terminated by the association or revoked by the Commission.

(b) All security deposits posted by a group self-insurance association with the Workers' Compensation Court Administrator pursuant to 85 O. S., § 351 before February 1, 2014 as a condition for the association to self fund its workers' compensation obligations, which are maintained by the Court Administrator and in effect on January 31, 2014, shall remain in full force and effect, pursuant to their respective terms, on and after February 1, 2014, notwithstanding assumption by the Commission of the Court Administrator's regulatory responsibilities regarding group self-insurance associations beginning February 1, 2014. At that time, the Commission shall be considered the successor entity to the Workers' Compensation Court Administrator in all respects regarding the security deposit, with full power and authority in its own name to make demand and collect thereon in the same manner and to the same extent as and if the Commission were the Court Administrator. The Commission may require a group self-insurance association to post an adequate replacement security deposit, made payable to the Commission.

SUBCHAPTER 13. THIRD-PARTY ADMINISTRATOR PERMIT FOR WORKERS' COMPENSATION PURPOSES

810:25-13-1. Application

(a) Any person desiring authorization to act as a TPA for workers' compensation purposes shall make application on a form prescribed by the Commission. The application must be completed in its entirety, including all attachments and supporting documents required in the application, and submitted at least thirty (30) days before the desired effective date of the permit. A One Thousand Dollar ($1,000.00) nonrefundable application fee, made payable to the Commission, must be submitted with the application. The applicant must receive approval from the Commission before contracting with any client to provide administrative services for Oklahoma workers' compensation self-insurers.

(b) The application shall be reviewed by the Commission's Insurance Division. If the application is determined to be sufficient, the Division will issue a permit licensing the applicant as a Third-Party Administrator, for a period of one year. If the application is determined to be deficient, the Division will notify the applicant thereof, stating the reasons for the deficiency. If the deficiency cannot be resolved within the stated time from the Division, the application will be denied.

(c) An applicant may withdraw its pending Application for approval as a TPA for workers' compensation purposes at any time. Once withdrawn, no further action regarding the application will be taken by the Commission and the Commission's file on the application request will be considered closed.

(d) The Commission's Insurance Division may extend or amend an existing permit, in its discretion, if necessary for the completion of a renewal application or a change in facts of the permit.

810:25-13-2. Renewals

The criteria for renewal of a TPA permit shall be the same as that for a new applicant.

810:25-13-3. Termination or revocation of authority

(a) Any TPA may surrender its authority to act as a TPA for workers' compensation purposes by notifying the Commission in writing of the effective date of the surrender.

(b) The TPA permit may be revoked by the Commission at any time upon reasonable notice for good cause shown, including, but not limited to, failure to comply with the rules of the Commission.

810:25-13-4. Operating requirements

The TPA must:

(1) Have adequate personnel on staff to handle the volume and type of work. The TPA may subcontract for services not provided by the TPA, but requested from the self-insurer;

(2) Be financially solvent, and must report its financial statements on an annual basis to the Commission in an approved form and manner;

(3) Maintain an adequate Errors and Omissions policy;

(4) Maintain an adequate Fidelity Bond;

(5) Establish claims reserves at the most likely outcome. Best case reserving is not allowed.

(6) Undergo a triennial audit of its claims handling, claims reserving, and internal controls, by independent professionals;

(7) Retain its independence when setting claim reserves. The TPA shall not let the self-insurer influence the amount of the reserve or the closing of a claim;

(8) Maintain an Oklahoma office, if handling a group self-insurance association program; and

(9) Maintain adequate computerized records and paper claims files on each claim. A copy of this information must be made available for the Commission's review at all times upon request.

[OAR Docket #15-565; filed 6-15-15]

Executive Orders

As required by 75 O.S., Sections 255 and 256, Executive Orders issued by the Governor of Oklahoma are published in both the *Oklahoma Register* and the *Oklahoma Administrative Code*. Executive Orders are codified in Title 1 of the *Oklahoma Administrative Code.*

Pursuant to 75 O.S., Section 256(B)(3), "Executive Orders of previous gubernatorial administrations shall terminate ninety (90) calendar days following the inauguration of the next Governor unless otherwise terminated or continued during that time by Executive Order."

TITLE 1. EXECUTIVE ORDERS

1:2015-23D.

FOURTH AMENDED EXECUTIVE ORDER 2015-23

I, Todd Lamb, Governor of the State of Oklahoma, pursuant to the power vested in me by Section 2 of Article VI of the Oklahoma Constitution hereby declare the following:

1. Tornadoes, severe storms, straight-line winds, and flooding beginning May 6, 2015, and continuing have caused extensive damage to public and private properties within the State of Oklahoma; and said damages have caused an undue hardship on the citizens of this State.
2. It may be necessary to provide for the rendering of mutual assistance among the State and political subdivisions of the State with respect to carrying out disaster emergency functions during the continuance of the State emergency pursuant to the provisions of the Oklahoma Emergency Management Act of 2003.
3. There is hereby declared a disaster emergency caused by the tornadoes, severe storms, straight-line winds, and flooding in the State of Oklahoma that threatens the lives and property of the people of this State and the public's peace, health, and safety. The counties included in this declaration are:

Adair, Alfalfa, Atoka, Beaver, Beckham, Blaine, Bryan, Caddo, Canadian, Carter, Cherokee, Choctaw, Cimarron, Cleveland, Coal, Comanche, Cotton, Craig, Creek, Custer, Delaware, Dewey, Ellis, Garfield, Garvin, Grady, Grant, Greer, Harmon, Harper, Haskell, Hughes, Jackson, Jefferson, Johnston, Kay, Kingfisher, Kiowa, Latimer, LeFlore, Lincoln, Logan, Love, Major, Mayes, McClain, McIntosh, Marshall, McCurtain, Murray, Muskogee, Noble, Nowata, Okfuskee, Oklahoma, Okmulgee, Osage, Ottawa, Pawnee, Payne, Pittsburg, Pontotoc, Pottawatomie, Pushmataha, Roger Mills, Rogers, Seminole, Sequoyah, Stephens, Texas, Tillman, Tulsa, Wagoner, Washington, Washita, Woods, and Woodward.

This declaration may be amended to add counties as conditions warrant.

4. The State Emergency Operations Plan was activated on May 6, 2015, and resources of all State departments and agencies available to meet this emergency are hereby committed to the reasonable extent necessary to protect lives and to prevent, minimize, and repair injury and damage. These efforts shall be coordinated by the Director of the Department of Emergency Management with comparable functions of the federal government and political subdivisions of the State.
5. State agencies, in responding to this disaster emergency, may make necessary emergency acquisitions to fulfill the purposes of this proclamation without regard to limitations or bidding requirements on such acquisitions.
6. This Executive Order shall terminate at the end of thirty (30) days.

Copies of this Executive Order shall be distributed to the Director of Emergency Management who shall cause the provisions of this Order to be implemented by all appropriate agencies of State government.

IN WITNESS WHEREOF, I have set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, this 23rd day of July 2015.

BY THE GOVERNOR OF THE STATE OF OKLAHOMA

Todd Lamb

ATTEST:
Chris Benge
Secretary of State

[OAR Docket #15-746; filed 7-23-15]

1:2015-33.

EXECUTIVE ORDER 2015-33

I, Mary Fallin, Governor of the State of Oklahoma, pursuant to the power and authority vested in me by Section 2 of Article VI of the Oklahoma Constitution, hereby order all state boards who have a majority of members who are participants of markets that are directly or indirectly controlled by the board, to immediately implement and adopt the following procedures.

Attorney General Guidance

Attorney General Scott Pruitt issued a letter to this office on July 6, 2015, recommending reform of certain current practices by Oklahoma licensing boards, in light of the recent opinion of the United States Supreme Court in *North Carolina State Board of Dental Examiners v. Federal Trade Commission*. The Attorney General advised that any state board that has a majority of its members who are participants of markets that are directly or indirectly controlled by the board would be subject to possible suit for violations of antitrust law. The Attorney General opined that Oklahoma must implement procedures for those boards with a majority of such members that demonstrate active supervision by the State by a politically accountable state actor who has the power to review, veto and modify board decisions.

Administrative Rules

The Attorney General has reviewed the rulemaking powers of such boards and concluded that sufficient statutory safeguards are currently in place to prevent exposure to possible suit for violations of antitrust or other anti-competitive laws. The *Oklahoma Administrative Procedures Act* and *Executive Order 2013-34* clearly establish procedures that demonstrate active supervision by the Governor and Legislature who are compromised of politically accountable actors. Both the Governor and the Legislature have the power to review, veto and modify board administrative rules.

Other Board Licensure or Prohibition Actions

The Attorney General has concluded that licensure or prohibition actions (other than rulemaking) have insufficient procedures to demonstrate active supervision of boards with a majority of members who are participants of markets that are directly or indirectly controlled by the board. The Attorney General recommended that a single state agency be clearly established as the politically accountable actor with the power to review, veto and modify board licensure or prohibition actions.

The agency best equipped to assume these duties is the Office of the Attorney General. It is the Office of the Attorney General that has the ultimate responsibility for review of violations of antitrust statutes. It is the Office of the Attorney General that is charged with the responsibility to enjoin and enforce the *Oklahoma Antitrust Reform Act* (79 O.S. §§ 201 et seq.) and the *Oklahoma Consumer Protection Act* (15 O.S. §§ 751 et seq.). The Office of the Attorney General is also the entity that provides legal advice to most boards and agencies. See 74 O.S. § 18c.

Therefore, I hereby order that all non-rulemaking actions proposed by any state board on which, a majority of its members are participants in the same market that the board regulates:

1. All proposed licensure or prohibition actions shall be submitted to the Office of the Attorney General for review and written analysis of possible violation of law;
2. Upon receipt of the written analysis provided by the Office of the Attorney General, the board shall defer to any recommended modification, including rescinding the proposed action; and
3. Failure to follow the written analysis provided by the Office of the Attorney General shall constitute misconduct and shall subject such board member(s) to removal for cause by the appointing authority.

This Executive Order shall be distributed to all members of the Governor's Executive Cabinet and the chief executives of all state agencies, who shall cause the provisions of this Order to be implemented.

IN WITNESS WHEREOF, I have set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 17th day of July, 2015.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Mary Fallin

ATTEST:
LeeAnn M. Hayes
Acting Assistant Secretary of State

[OAR Docket #15-742; filed 7-17-15]

1:2015-34.

EXECUTIVE ORDER 2015-34

I, Mary Fallin, Governor of the State of Oklahoma, hereby direct the appropriate steps be taken to fly all American and Oklahoma flags on State property at half-staff from 2:00 p.m. on July 17, 2015 until 8:00 a.m. on Monday, July 20, 2015, in memory of those killed and injured in the senseless act of violence perpetrated in Chattanooga, Tennessee on July 16, 2015.

This executive order shall be forwarded to the Division of Capital Assets Management, which shall cause the provisions of this order to be implemented by all appropriate agencies of State government.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 17th day of July, 2015.

BY THE GOVERNOR OF THE STATE OF OKLAHOMA

Mary Fallin

ATTEST:
LeeAnn M. Hayes
Acting Assistant Secretary of State

[OAR Docket #15-741; filed 7-17-15]

1:2015-35.

EXECUTIVE ORDER 2015-35

Yesterday in Chattanooga, Tennessee, a terrorist opened fire on a military recruiting center and a Navy Operational Support Center and Marine Corps Reserve Center. Four Marines were murdered by this depraved and cowardly killer. Unfortunately, this kind of targeted, violent attack against our military personnel is becoming increasingly common; there have been at least eight major assaults on military sites since 2009. We must take every action to ensure that our servicemen and women are appropriately protected from potential assailants.

Accordingly, I, Mary Fallin, Governor of the State of Oklahoma, by the authority vested in me pursuant to Sections 2 and 6 of Article VI of the Oklahoma Constitution, hereby authorize the State Adjutant General to arm certain full-time military personnel on military installations throughout Oklahoma with weaponry as he deems necessary to adequately provide for the security of the facilities and their occupants. Such installations shall include, but not be limited to, military recruiting offices.

This Executive Order shall be distributed to the State Adjutant General, who shall cause the provisions of this Order to be implemented.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 17th day of July, 2015.

BY THE GOVERNOR OF THE STATE OF OKLAHOMA

Mary Fallin

ATTEST:
LeeAnn M. Hayes
Acting Assistant Secretary of State

[OAR Docket #15-743; filed 7-17-15]

1:2015-36.

EXECUTIVE ORDER 2015-36

I, Todd Lamb, Governor of the State of Oklahoma, hereby direct the appropriate steps be taken to fly all American and Oklahoma flags on State property at half-staff from 5:00 p.m. on July 21, 2015 until 8:00 a.m. on Monday, July 27, 2015, Governor Fallin lowered flags from July 17th to July 20th in memory of those killed and injured in the senseless act of violence perpetrated in Chattanooga, Tennessee on July 16, 2015. I now lower the flags pursuant to Presidential Proclamation issued today as a mark of respect for the victims of the senseless acts of violence.

This executive order shall be forwarded to the Division of Capital Assets Management, which shall cause the provisions of this order to be implemented by all appropriate agencies of State government.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 17th day of July, 2015.

BY THE GOVERNOR OF THE STATE OF OKLAHOMA

Todd Lamb

ATTEST:
LeeAnn M. Hayes
Acting Assistant Secretary of State

[OAR Docket #15-745; filed 7-21-15]

1:2015-37.

EXECUTIVE ORDER 2015-37

I, Todd Lamb, Governor of the State of Oklahoma, hereby direct that appropriate steps be taken to fly all American and Oklahoma flags on State property at half-staff from 10:00 a.m. on Friday, July 24, 2015 until 8:00 a.m. on Monday, July 27, 2015, to honor Herschal H. Crow, Jr., who passed away on Wednesday, July 22, 2015.

Herschal Crow was a dedicated public servant who successfully advocated for real and lasting transportation improvements. As a former State Senator, Chairman of the Oklahoma Transportation Commission, and Oklahoma Secretary of Transportation, he served our great state with distinction and lifelong dedication.

This Executive Order shall be forwarded to the Department of Capital Assets Management, who shall cause the provisions of this Order to be implemented by all appropriate agencies of State government.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 24th day of July, 2015.

BY THE GOVERNOR OF THE STATE OF OKLAHOMA

Todd Lamb

ATTEST:
LeeAnn M. Hayes
Acting Assistant Secretary of State

[OAR Docket #15-747; filed 7-24-15]

1:2015-37A.

AMENDED EXECUTIVE ORDER 2015-37

I, Todd Lamb, Governor of the State of Oklahoma, hereby direct that appropriate steps be taken to fly all American and Oklahoma flags on State property at half-staff from 8:00 a.m. to 5:00 p.m. on Monday, July 27, 2015, to honor Herschal H. Crow, Jr., who passed away on Wednesday, July 22, 2015.

Herschal Crow was a dedicated public servant who successfully advocated for real and lasting transportation improvements. As a former State Senator, Chairman of the Oklahoma Transportation Commission, and Oklahoma Secretary of Transportation, he served our great state with distinction and lifelong dedication.

This Executive Order shall be forwarded to the Department of Capital Assets Management, who shall cause the provisions of this Order to be implemented by all appropriate agencies of State government.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 24th day of July, 2015.

BY THE GOVERNOR OF THE STATE OF OKLAHOMA

Todd Lamb

ATTEST:
LeeAnn M. Hayes
Acting Assistant Secretary of State

[OAR Docket #15-748; filed 7-24-15]