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# The Oklahoma Register

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Oklahoma  
Secretary of State  
Office of Administrative Rules



**Mary Fallin, Governor**  
**Chris Benge,**  
**Secretary of State**  
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# Notices of Rulemaking Intent

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

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

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

## **TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 4. RULES OF PRACTICE AND PROCEDURE**

*[OAR Docket #15-776]*

### **RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

### **PROPOSED RULES:**

Subchapter 17. Electronic Reporting  
252:4-17-2. Definitions [AMENDED]  
252:4-17-4. Electronic signature agreement [AMENDED]  
Appendix E. Electronic Signature Agreement [REVOKED]

### **SUMMARY:**

The proposed revisions are needed so Subchapter 17 Electronic Reporting will allow for the electronic verification of identity rather than requiring a notarized paper submittal for the identification process.

### **AUTHORITY:**

Environmental Quality Board; 27A O.S. §§ 2-2-101 and 2-3-201

### **COMMENT PERIOD:**

Persons wishing to present their views in writing may do so from October 1, 2015 through November 2, 2015 at the following address: Sarah Penn, Deputy General Counsel, Oklahoma Department of Environmental Quality, 707 North Robinson, Oklahoma City, OK 73102. Oral comments may be made at the November 10, 2015 Environmental Quality Board hearing.

### **PUBLIC HEARING:**

A public hearing will be held before the Environmental Quality Board at 9:30 a.m. on November 10, 2015, at the Canadian Valley Technology Center - 1401 Michigan Ave., Chickasha, OK 73018.

### **REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

The DEQ requests that business entities affected by these proposed rules provide the DEQ, within the comment period, in dollar amounts if possible, the increase in the level of direct costs, such as fees, and indirect costs such as such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rules. Business entities may submit this information in writing to Sarah Penn at the above address before the close of the comment period on November 2, 2015.

### **COPIES OF PROPOSED RULES:**

Copies of the proposed rules may be obtained from the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102. The proposed rules are also available on the DEQ website at <http://www.deq.state.ok.us>.

### **RULE IMPACT STATEMENT:**

Pursuant to 75 O.S. § 303(D), a rule impact statement will be prepared and may be obtained from the DEQ at the above address beginning October 1, 2015.

### **CONTACT PERSON:**

Sarah Penn, DEQ Deputy General Counsel, Sarah.Penn@deq.ok.gov or (405) 702-7184.

### **ADDITIONAL INFORMATION:**

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

*[OAR Docket #15-776; filed 9-3-15]*

## **TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 15. CLINICAL TRIALS ON THE USE OF CANNABIDIOL**

*[OAR Docket #15-779]*

### **RULEMAKING ACTION:**

Notice of proposed EMERGENCY and PERMANENT rulemaking

### **PROPOSED RULES:**

Subchapter 1. Purpose and Definitions [NEW]  
310:15-1-1. Purpose [NEW]  
310:15-1-2. Definitions [NEW]  
Subchapter 3. Physician Application and Reporting [NEW]  
310:15-3-1. Physician application [NEW]  
310:15-3-2. Physician reporting [NEW]

### **SUMMARY:**

These proposed regulations, if adopted, will implement the agency's requirements from House Bill Number 2154, from the 1<sup>st</sup> Session of the 55<sup>th</sup> Oklahoma Legislature (2015) known as "Katie and Cayman's Law" and codified at 63 O.S. §§ 2-801 through 2-805. The proposed regulations set forth the Department's requirements for the necessary approvals of clinical trials on subjects under the age of 18 for the use of Cannabidiol in treating certain types of seizures as required

## Notices of Rulemaking Intent

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by the House Bill. *Cannabidiol*" means a nonpsychoactive cannabinoid found in the plant *Cannabis sativa L.* or any other preparation thereof, that has a tetrahydrocannabinol concentration of not more than three-tenths of one percent (0.3%) and that is delivered to the patient in the form of a liquid [63 O.S. § 2-801]

Emergency rulemaking is sought pursuant to the emergency adoption of House Bill Number 2154, known as "Katie and Cayman's Law" and codified at 63 O.S. §§ 2-801 through 2-805. This law was adopted with an emergency clause stating "for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval, which was April 30, 2015. This Emergency rulemaking action is necessary to promulgate rules to implement the provisions in the new law pertaining to the physician application for clinical trials and subsequent reporting.

### **AUTHORITY:**

Oklahoma State Board of Health, Title 63 O.S. Section 1-104, and Title 63 O.S. §§ 2-801 through 2-805

### **COMMENT PERIOD:**

October 1, 2015, through November 4, 2015. Interested persons may informally discuss the proposed rules with the contact person identified below; or may, through November 4, 2015, submit written comment to the contact person identified below; or may, at the hearing, ask to present written or oral views.

### **PUBLIC HEARING:**

Pursuant to 75 O.S. § 303 (A), the public hearing for the proposed rulemaking in this chapter shall be on November 4, 2015, at the Oklahoma State Department of Health, 1000 Northeast Tenth Street, Oklahoma City, OK 73117-1207, in room 1102 beginning at 10:00 a.m. Those wishing to present oral comments should be present at that time to register to speak. The hearing will close at the conclusion of those registering to speak. Interested persons may attend for the purpose of submitting data, views or concerns, orally or in writing, about the rule proposal described and summarized in this Notice.

### **REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, on the increase in the level of direct costs such as fees, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rule. Business entities may submit this information in writing through November 4, 2015, to the contact person identified below.

### **COPIES OF PROPOSED RULES:**

The proposed rules may be obtained for review from the contract person identified below or via the agency website at [www.health.ok.gov](http://www.health.ok.gov).

### **RULE IMPACT STATEMENT:**

Pursuant to 75 O.S., §303(D), a rule impact statement is available through the contact person identified.

### **CONTACT PERSON:**

Donald D. Maisch, General Counsel, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207; phone (405) 271-6017, e-mail: [donm@health.ok.gov](mailto:donm@health.ok.gov).

[OAR Docket #15-779; filed 9-8-15]

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## **TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 257. FOOD SERVICE ESTABLISHMENTS**

[OAR Docket #15-784]

### **RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

### **PROPOSED RULES:**

Subchapter 1. Purpose and Definitions [AMENDED]

Subchapter 3. Management and Personnel [AMENDED]

Subchapter 5. Food [AMENDED]

Subchapter 7. Equipment, Utensils and Linens  
[AMENDED]

Subchapter 9. Water, Plumbing and Waste [AMENDED]

Subchapter 11. Physical Facilities [AMENDED]

Subchapter 13. Poisonous or Toxic Materials [AMENDED]

Subchapter 15. Compliance and Enforcement  
[AMENDED]

Subchapter 17. Mobile Pushcarts, Mobile Food ~~Service~~  
Establishments, and Mobile Retail Food ~~Service~~  
Establishments [AMENDED]

Appendix A. Tables [NEW]

### **SUMMARY:**

These proposed regulations, if adopted, will bring the chapter into compliance with model law, published by the United States Food and Drug Administration (FDA). The proposed changes include the removal of unnecessary language and include modifications to current language to make all language consistent. Many of the changes include removal of the word "service" from the term "food service establishment."

Local, state, tribal, and federal regulators use the FDA Food Code as a model to develop or update their own food safety rules and to be consistent with national food regulatory policy.

The Food Code is a model for safeguarding public health and ensuring food is unadulterated and honestly presented when offered to the consumer. It represents FDA's best advice for a uniform system of provisions that address the safety and protection of food offered at retail and in food service.

The 2013 edition of the model code reflects the input of regulatory officials, industry, academia, and consumers that participated in the 2012 meeting of the Conference

for Food Protection (CFP). Collaboration with the CFP and our partners at the U.S. Department of Agriculture's Food Safety and Inspection Service and the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services helps ensure the Food Code establishes sound requirements that prevent foodborne illness and injury and eliminates the most important food safety hazards in retail and foodservice facilities. [Food Code 2013, U.S. Food and Drug Administration, July 2, 2015, <http://www.fda.gov/Food/GuidanceRegulation/RetailFoodProtection/FoodCode/ucm374275.htm> (August 3, 2015)].

A summary of changes to the 2013 FDA Food code is linked here:

**Summary of Changes In the FDA Food Code 2013** [<http://www.fda.gov/Food/GuidanceRegulation/RetailFoodProtection/FoodCode/ucm374759.htm>]. Not all of the changes described in the "Summary of Changes" are applicable to the Oklahoma Food Code.

**AUTHORITY:**

Oklahoma State Board of Health, Title 63 O.S. Section 1-104, and Title 63 O.S. §§ 1-106.3 and 1-1118.

**COMMENT PERIOD:**

October 1, 2015, through November 4, 2015. Interested persons may informally discuss the proposed rules with the contact person identified below; or may, through November 4, 2015, submit written comment to the contact person identified below; or may, at the hearing, ask to present written or oral views.

**PUBLIC HEARING:**

Pursuant to 75 O.S. § 303 (A), the public hearing for the proposed rulemaking in this chapter shall be on November 4, 2015, at the Oklahoma State Department of Health, 1000 Northeast Tenth Street, Oklahoma City, OK 73117-1207, in room 1102 beginning at 10:00 a.m. Those wishing to present oral comments should be present at that time to register to speak. The hearing will close at the conclusion of those registering to speak. Interested persons may attend for the purpose of submitting data, views or concerns, orally or in writing, about the rule proposal described and summarized in this Notice.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, on the increase in the level of direct costs such as fees, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rule. Business entities may submit this information in writing through November 4, 2015, to the contact person identified below.

**COPIES OF PROPOSED RULES:**

The proposed rules may be obtained for review from the contract person identified below or via the agency website at [www.health.ok.gov](http://www.health.ok.gov).

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S., §303(D), a rule impact statement is available through the contact person identified.

**CONTACT PERSON:**

Donald D. Maisch, General Counsel, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207; phone (405) 271-6017, e-mail: [donm@health.ok.gov](mailto:donm@health.ok.gov).

*[OAR Docket #15-784; filed 9-8-15]*

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 265. HEARING AID DEALERS AND FITTERS**

*[OAR Docket #15-783]*

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

- Subchapter 1. General Provisions
  - 310:265-1-3 [AMENDED]
- Subchapter 3. Examinations
  - 310:265-3-1 [AMENDED]
  - 310:265-3-2 [AMENDED]
  - 310:265-3-3 [AMENDED]
- Subchapter 5. License Requirements
  - 310:265-5-1 [AMENDED]
  - 310:265-5-2 [AMENDED]
  - 310:265-5-3 [AMENDED]
  - 310:265-5-4 [AMENDED]
  - 310:265-5-6 [AMENDED]
  - 310:265-5-7 [AMENDED]
  - 310:265-5-8 [AMENDED]
- Subchapter 7. Regulatory Enforcement
  - 310:265-7-2 [AMENDED]
  - 310:265-7-3 [AMENDED]

**SUMMARY:**

310:265-1-3 The current rule defines direct supervision for a temporary license holder. The proposal clarifies the requirement for direct supervision to be direct on-site supervision since a licensed hearing aid dealer and fitter shall accompany a temporary permit holder anytime the permit holder is performing the practice of fitting and dealing in hearing aids. The proposal also includes the definition of a Personal Sound Amplification Product (PSAP) and cleans up grammar. This change is necessary to ensure temporary licensees are conducting business while a licensed fitter and dealer is available for direct assistance and not simply under a supervisor who may or may not be at the same location. The effect of this Rule change will better protect hearing aid dealer

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clients by ensuring a licensed personnel is located on-site during all transactions of business requiring a license.

310:265-3-1 The current rule defines the examination fee at Ninety-five Dollars (\$95) and states the Commissioner must determine the time and place for examination. The proposed language removes this information. This change is necessary to allow the Department the capability to allow third party examiners more flexibility to schedule and administer exams as well as identify fees that the applicant will be responsible directly to them. The effect of this Rule will better meet the need of license applicants in allowing them options on when, where, and with whom to test.

310:265-3-1 The current rule outlines the passing scale for each section required portion of the examination. The proposed language removes the passing scores and simply identifies the portion of the examination that must be passed. This change is necessary to allow the Department the capability to modify passing scores according to the validation of the available exam(s). The effect of this Rule will better meet the need of license applicants in the event the passing score must be modified due to updates and upgrades with any portion of the exam.

310:265-3-1 The current rule requires applicants who fail a portion of the test three times to wait five (5) years before reapplying. The proposed language will change the wait time from five years to one year but also includes a seven day waiting period between each test attempt. This change is necessary to still require applicants take time to study for the profession but will still provide a timeframe that people will continue in the profession. The effect of this Rule will better meet the need of license applicants and hearing aid fitter and dealer owners in identifying dedicated staff and being able to retain them.

310:265-3-2 The current rule specifies the state written exam shall follow by National Hearing Aid Society guidelines and other similar examinations given by surrounding states. The proposal removes reference to the national examining body. This change is necessary to allow the Department the ability to create an exam outside a national organization and identify other exams meeting minimum requirements. The effect will give the Department the control to utilize the most efficient test(s) available while also giving applicants the ability to decide which exam would be best for their career choice.

310:265-3-3 The current rule identifies license fees and exam fee. The proposal establishes the license fee as a license application fee and removes the exam fee. In addition, a statement is added to make application fees non-refundable. This change is necessary because it has been the practice to refund the license fee and exam fee upon withdrawal after administrative work has already been completed (to include processing/sorting mail; processing/receipting payment; reviewing the application packet; and sending correspondence). The effect will ensure efforts by the Department as a whole in processing applications are not refunded and will offset administrative costs in processing.

310:265-5-1 The current rule states organizations employing licensed hearing aid dealers and fitters shall file with the Commissioner a list of licensees annually. The proposal establishes to modify this statement to only require the list upon request of the Department. This change is needed because the Department does not license or regulate businesses and the Department has not practiced this requirement in the past, requiring hearing aid dealer businesses to submit lists. The effect of the Rule change would allow all businesses and the Department to be in compliance with the rule.

310:265-5-2 The current rule states reciprocity may be granted if a jurisdiction has equivalent or more stringent regulations and program requirements. The proposal would clarify the requirements for reciprocal licensing. This change is needed because most other states do not require a Trouble Shooting practical exam portion and as such applicants from other states are not granted reciprocity even though their programs are typically as or more stringent. The effect of the Rule change would allow those from out-of-state in good standing to sit for the Oklahoma regulations portion of the exam and the Trouble Shooting portion of the exam to be licensed by reciprocity.

310:265-5-3 The current rule does not address mobile operations. The proposal would include language to further clarify conditions necessary, in a mobile situation, that would allow licensed professionals to conduct business in these types of environments. This change is needed to clarify the requirements of ambient noise levels to conduct hearing testing outside of the business office and also to ensure customers are aware of service options when they purchase from a mobile or temporary clinic. The effect of the Rule change would provide clarification as we move into a more mobile community and more importantly make customers aware of extended travel they may be required to make to acquire routine maintenance on a hearing aid device.

310:265-5-4 The current rule does not require a statement be included on all customer receipts outlining a tolled period should the device be returned, although the rule does address it specifically. The proposal would include a statement about tolled periods. This change is necessary due to customers not being aware of extended thirty day return policy should their unit be turned over for maintenance any time during that 30 days. The effect of the rule change would benefit the customer by better outlining their time limits for return.

310:265-5-6 The current rule sets limitations on when continuing education may be earned and how many hours must be accrued. The proposal would remove or clarify this statement to allow licensed professionals to accrue continuing education on-line or during working hours but sets on-line hours to no more than four (4) clock hours towards the ten (10) required hours. This change is needed to allow employees the opportunity to train while on the clock but also ensure face-to-face training is being acquired. The effect of the rule change would eliminate or clarify continuing education restrictions but also ensure the profession is obtaining and completing training to keep up with the current practices.

310:265-5-7 The current rule states an applicant with a temporary permit must be under direct supervision. The proposal would clarify to state direct on-site supervision. This change is needed to clarify the need for those practicing with a temporary license be accompanied by a licensed hearing aid fitter and dealer and not necessarily under supervision where the supervisor may be operating at a different clinic. This change is needed because the Department has fielded questions and received notification of temporary license holders operating in the field without a licensed hearing aid fitter and dealer on-site even though the rule requires the accompaniment of a license holder. The effect of the rule change would ensure temporary licensees are providing services only when a licensed hearing aid fitter and dealer is available on-site to direct questions or acquire immediate assistance as needed.

310:265-5-8 The current rule identifies the use of a waiver that may be supplied if an applicant is not ambulatory; however, the definition of a qualified waiver relates to a written acknowledgement that the ambient noise level exceeded required decibel levels. The proposal will clarify when a qualified waiver is required and that it must be accompanied by written documentation from a medical authority. This change is needed to clarify the difference between a medical waiver for someone who is not ambulatory versus a temporary clinic setup that may not meet the decibel levels. The effect of the rule change would clarify the intent of a qualified waiver so mobile clinics operating above the maximum decibel level are not providing the waiver to clients and are fully disclosing the operation as a screening..

310:265-7-2 The current rule requires a patient to use an otolaryngologist if one is within 100 miles. The proposal changes otolaryngologist to a board eligible or board certified ear specialist This change is needed because an ear specialist may also be an ear nose and throat specialist or just an ear specialist. The effect of the rule change will clarify what type of physician is required for minors.

310:265-7-3 The current rule still identifies the Hearing Aid Advisory Council. The proposal updates the Rule to refer to the Consumer Protection Licensing Advisory Council. This change is needed because the Hearing Aid Advisory Council was replaced in the Act. The effect of the rule change would be in compliance with the Act.

**AUTHORITY:**

Oklahoma State Board of Health, Title 63 O.S. Section 1-104; and Title 63 O.S. Section 1-1750 et seq.

**COMMENT PERIOD:**

October 1, 2015, through November 4, 2015. Interested persons may informally discuss the proposed rules with the contact person identified below; or may, through November 4, 2015, submit written comment to the contact person identified below; or may, at the hearing, ask to present written or oral views.

**PUBLIC HEARING:**

Pursuant to 75 O.S. § 303 (A), the public hearing for the proposed rulemaking in this chapter shall be on November

4, 2015, at the Oklahoma State Department of Health, 1000 Northeast Tenth Street, Oklahoma City, OK 73117-1207, in room 1102 beginning at 10:00 a.m. Those wishing to present oral comments should be present at that time to register to speak. The hearing will close at the conclusion of those registering to speak. Interested persons may attend for the purpose of submitting data, views or concerns, orally or in writing, about the rule proposal described and summarized in this Notice.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, on the increase in the level of direct costs such as fees, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rule. Business entities may submit this information in writing before November 4, 2015, to Lynnette Jordan, Interim Director, Consumer Health Service, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207, or by e-mail to [lynnette@health.ok.gov](mailto:lynnette@health.ok.gov).

**COPIES OF PROPOSED RULES:**

The proposed rules may be obtained for review from staff of the Occupational Licensing Division, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207, via electronic mail request to [lynnette@health.ok.gov](mailto:lynnette@health.ok.gov), or via agency website at [www.health.ok.gov](http://www.health.ok.gov).

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S., §303(D), a rule impact statement is available at the location listed above for obtaining copies of the rule.

**CONTACT PERSON:**

Lynnette Jordan, Interim Director, Consumer Health Service, phone (405) 271-5779, e-mail [lynnette@health.ok.gov](mailto:lynnette@health.ok.gov).

*[OAR Docket #15-783; filed 9-8-15]*

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 641. EMERGENCY MEDICAL SERVICES**

*[OAR Docket #15-782]*

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

- Subchapter 1. General EMS Programs [AMENDED]
- Subchapter 3. Ground Ambulance ServicesService [AMENDED]

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Subchapter 5. Personnel Licenses and Certification [AMENDED]

Subchapter 7. Training Programs [AMENDED]

Subchapter 11. Specialty Care Ambulance Service [NEW]

Subchapter 13. Air Ambulance Service [NEW]

Subchapter 15. Emergency Medical Response Agency [NEW]

Subchapter 17. Stretcher Aid Van Services [NEW]

### SUMMARY:

The purpose of this rule change is to address conflicting requirements identified in the current rule, update requirements of specialty care and stretcher aid vans, better align the rule with national guidelines and requirements, and include statutory amendments enacted in 2013 in Enrolled House Bill 1083.

The proposed changes rearrange the Chapter based on type of license and certification.

Subchapter 1, General EMS Programs, currently sets forth the organization, subchapters, statutes, and smoking prohibitions. This proposal amends the subchapter to include definitions for the Chapter. The proposal clarifies the reorganization of subchapters by license type and includes the new definitions required by statutory changes in 2013. The effect of the rule change will be a more complete set of definitions and a better organized Chapter of rules.

Subchapter 3, Ground Ambulance Service, currently sets forth the approval and renewal of emergency medical service agency licensure, certification, standards, and authorization, and focuses on the ground ambulance license type. This proposal clarifies the requirements for the ground ambulance service license, removes conflicting language, and incorporates changes such as emergency vehicle specifications, equipment requirements, and systems of care.

Subchapter 5, Personnel Licenses and Certification, currently provides for the individual licensure and certification levels, requirements for training, application requirements, and initial and renewal requirements for each license and certification level. This proposal amends the current subchapter with the required statutory changes. The section amends the scope of practice to meet industry standards and statutory changes. Additionally, it adds specific circumstances when the Department has authority to take licensure action against an individual for inappropriate actions or activities. The changes are necessary to meet statutory requirements and to improve processes for testing, certification, and licensure.

Subchapter 7, Training Programs, currently provides for the approval and renewal of training programs. It also contains instructor qualifications and standards. This proposal amends the current subchapter by including statutory requirements, removing conflicting language, and aligning the requirements to industry standards. The proposal clarifies differences between training program instructors and agency instructors. The effect of the rule changes will be to improve the Department's and the approved training programs' abilities to train, certify, and license qualified candidates.

Subchapter 11, Specialty Care Ambulance Service, is a new subchapter created to address requirements for the specialty care ambulance license type. The current specialty care language exists in subchapter 3 in eight sections, with cross references to several others. The proposed language will locate all aspects of this license type in one subchapter. The changes are necessary to meet the statutory changes of 2013 and to eliminate regulatory conflicts and language that does not apply to the license type. The effect of the rule change will be to fully implement statutory changes and locate all the requirements for this license type in one subchapter.

Subchapter 13, Air Ambulance Service, is a new subchapter created to locate all of the requirements for this license type in one subchapter and to address regulatory changes. The current air ambulance language exists in subchapter 3 in nine sections and is cross-referenced to several others. The proposed amendment improves the communication from air ambulance agencies to other emergency responders. The proposal clarifies and removes conflicts between Federal Aviation Administration jurisdiction and the Department's jurisdiction. The changes are necessary to remove conflicts and allow improve communication to update actual flight status on existing on-line communication software known as EMResource. The effect of this rule change will be to give emergency responders and health care facilities information on the location of available aircraft.

Subchapter 15, Emergency Medical Response Agencies, is a new subchapter created to bring all requirements for this certification into one subchapter. The current language for this agency type is in subchapter 3 with cross references in several other sections. The proposed language removes conflicting language and creates a new type of emergency medical response agency certification called an event standby. This covers the certification of an agency that provides care at mass gatherings such as athletic events, car races, or rodeos. Exceptions address industrial settings and providers that do not provide emergency medical care to the public. The rule will improve the standards for agencies that provide emergency medical care but do not transport patients to healthcare facilities.

Subchapter 17, Stretcher Aid Van Services, is a new subchapter created to include all requirements for this license type in one subchapter. The current rule for this category is in subchapter 3 in six sections and cross-referenced in several other sections. The proposed language removes regulatory conflicts and ensures that stretcher aid van services provide care within a scope of practice authorized in law. The proposed language clarifies the activities the license allows and removes several requirements that created burdens and conflicts within the license type. The effects of the rule change will be a more appropriate use of this license type while removing unnecessary rules.

### AUTHORITY:

Oklahoma State Board of Health, Title 63 O.S. Section 1-104; House Bill 1083 (2013), and Title 63 O.S. Section 1-2501et seq.

**COMMENT PERIOD:**

October 1, 2015, through November 4, 2015. Interested persons may informally discuss the proposed rules with the contact person identified below; or may, through November 4, 2015, submit written comment to the contact person identified below; or may, at the hearing, ask to present written or oral views.

**PUBLIC HEARING:**

Pursuant to 75 O.S. § 303 (A), the public hearing for the proposed rulemaking in this chapter shall be on November 4, 2015, at the Oklahoma State Department of Health, 1000 Northeast Tenth Street, Oklahoma City, OK 73117-1207, in room 1102 beginning at 10:00 a.m. Those wishing to present oral comments should be present at that time to register to speak. The hearing will close at the conclusion of those registering to speak. Interested persons may attend for the purpose of submitting data, views or concerns, orally or in writing, about the rule proposal described and summarized in this Notice.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, on the increase in the level of direct costs such as fees, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rule. Business entities may submit this information in writing through November 4, 2015, to the contact person identified below.

**COPIES OF PROPOSED RULES:**

The proposed rules may be obtained for review from the contract person identified below or via the agency website at [www.health.ok.gov](http://www.health.ok.gov).

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S., §303(D), a rule impact statement is available through the contact person identified.

**CONTACT PERSON:**

Dale Adkerson, Administrative Program Manager- EMS Division, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207; phone (405) 271-4027, e-mail [dalea@health.ok.gov](mailto:dalea@health.ok.gov).

*[OAR Docket #15-782; filed 9-8-15]*

**TITLE 310. OKLAHOMA STATE  
DEPARTMENT OF HEALTH  
CHAPTER 675. NURSING AND  
SPECIALIZED FACILITIES**

*[OAR Docket #15-781]*

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

Subchapter 9. Resident Care Services  
310:675-9-9.1 [AMENDED]

**SUMMARY:**

This proposal amends OAC 310:675-9-9.1(i) which deals with bulk non-prescription drugs. This rule change removes a limitation on dispensing over the counter medications from bulk supplies of drugs maintained in nursing facilities. This change inserts verbatim language from the law concerning the ordering or authorizing of medications by a physician. This change deletes language which restricts the use of bulk over the counter medications to only as needed or unscheduled dosage regimens and only upon written order of a physician. This change will allow nursing facilities to dispense scheduled regimens of over the counter medications with an order or other authorization. This change brings the rule into conformity with the authorizing statute [Title 63 O.S. Section 63.1-1950(B)] which is permissive, rather than restrictive, regarding the dispensing of bulk over the counter medications based on a nonscheduled regimen.

**AUTHORITY:**

Oklahoma State Board of Health, Title 63 O.S. Section 1-104; and Title 63 O.S. Section 1-1950.

**COMMENT PERIOD:**

October 1, 2015 through November 4, 2015. Interested persons may informally discuss the proposed rules with Michael Cook, Directory, Long Term Care Service, Oklahoma State Department of Health; or may, before November 4, 2015, submit written comment to Michael Cook, Director, Long Term Care Service, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207, or by e-mail to [MikeC@health.ok.gov](mailto:MikeC@health.ok.gov); or may, at the hearing, ask to present written or oral views.

**PUBLIC HEARING:**

Pursuant to 75 O.S. § 303 (A), the public hearing for the proposed rulemaking in this chapter shall be on November 4, 2015, at the Oklahoma State Department of Health, 1000 Northeast Tenth Street, Oklahoma City, OK 73117-1207, in Room 1102 beginning at 10:00 a.m. Those wishing to present oral comments should be present at that time to register to speak. The hearing will close at the conclusion of those registering to speak. Interested persons may attend for the purpose of submitting data, views or concerns, orally or in writing, about the rule proposal described and summarized in this Notice.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, on the increase in the level of direct costs such as fees, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rule. Business entities may submit this information in writing before

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November 4, 2015, to Michael Cook, Director, Long Term Care Service,

Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207, or by e-mail to MikeC@health.ok.gov.

### COPIES OF PROPOSED RULES:

The proposed rules may be obtained for review from staff of the Long Term Care Service, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207, via electronic mail request to MikeC@health.ok.gov, or via agency website at www.health.ok.gov.

### RULE IMPACT STATEMENT:

Pursuant to 75 O.S., §303(D), a rule impact statement is available at the location listed above for obtaining copies of the rule.

### CONTACT PERSON:

Michael Cook, Director, Long Term Care Service, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207, or by e-mail to MikeC@health.ok.gov.

*[OAR Docket #15-781; filed 9-8-15]*

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### TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 680. RESIDENTIAL CARE HOMES

*[OAR Docket #15-780]*

### RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

### PROPOSED RULES:

Subchapter 13. Medication Storage and Administration  
310:680-13-2. [AMENDED]

### SUMMARY:

This proposal amends OAC 310:680-13-2 which deals with bulk nonprescription drugs. This rule change removes a limitation on dispensing over the counter medications from bulk supplies of drugs maintained in residential care homes. This change inserts verbatim language from the law concerning the ordering or authorizing of medications by a physician. This change deletes language which restricts the use of bulk over the counter medications to only as needed or unscheduled dosage regimens and only upon written order of a physician. This change will allow residential care homes to dispense scheduled regimens of over the counter medications with an order or other authorization. This change brings the rule into conformity with the authorizing statute [Title 63 O.S. Section 1-1950(B)] which is permissive, rather than restrictive, regarding the dispensing of bulk over the counter medications based on a nonscheduled regimen.

### AUTHORITY:

Oklahoma State Board of Health, Title 63 O.S. Section 1-104; and Title 63 O.S. Section 1-1950.

### COMMENT PERIOD:

October 1, 2015 through November 4, 2015. Interested persons may informally discuss the proposed rules with Michael Cook, Director, Long Term Care Service, Oklahoma State Department of Health; or may, before November 4, 2015, submit written comment to Michael Cook, Director, Long Term Care Service, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207, or by e-mail to MikeC@health.ok.gov; or may, at the hearing, ask to present written or oral views.

### PUBLIC HEARING:

Pursuant to 75 O.S. § 303 (A), the public hearing for the proposed rulemaking in this chapter shall be on November 4, 2015, at the Oklahoma State Department of Health, 1000 Northeast Tenth Street, Oklahoma City, OK 73117-1207, in room 1102 beginning at 10:00 a.m. Those wishing to present oral comments should be present at that time to register to speak. The hearing will close at the conclusion of those registering to speak. Interested persons may attend for the purpose of submitting data, views or concerns, orally or in writing, about the rule proposal described and summarized in this Notice.

### REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, on the increase in the level of direct costs such as fees, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rule. Business entities may submit this information in writing before November 4, 2015, to Michael Cook, Director, Long Term Care Service, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207, or by e-mail to MikeC@health.ok.gov.

### COPIES OF PROPOSED RULES:

The proposed rules may be obtained for review from staff of the Long Term Care Service, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207, via electronic mail request to MikeC@health.ok.gov, or via agency website at www.health.ok.gov.

### RULE IMPACT STATEMENT:

Pursuant to 75 O.S., §303(D), a rule impact statement is available at the location listed above for obtaining copies of the rule.

### CONTACT PERSON:

Michael Cook, Director, Long Term Care Service, Oklahoma State Department of Health, 1000 N.E. 10th

Street, Oklahoma City, OK 73117-1207, or by e-mail to MikeC@health.ok.gov.

[OAR Docket #15-780; filed 9-8-15]

**TITLE 630. SCENIC RIVERS COMMISSION  
CHAPTER 3. ELECTION PROCEDURES**

[OAR Docket #15-786]

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

- 630:3-1-2. Notice of filing period [AMENDED]
- 630:3-1-4. Notice of election [AMENDED]
- 630:3-1-7. Qualification for voting in election [AMENDED]
- 630:3-1-16. Counting of votes [AMENDED]

**SUMMARY:**

The changes in election procedures are intended to reduce costs by allowing the Administrator to replace the old form of newspaper publication of notices with more modern electronic notice. The proposed amendment would allow posting, emailing and publishing on the OSRC website more informative notices of Commissioner elections. These changes will also increase awareness of OSRC elections by putting notices where the public is more likely to read them, as opposed to legal notices in papers. These rules are consistent with the general election purposes as required by 82 O.S. § 1461(D).

**AUTHORITY:**

Scenic Rivers Commission; 82 O.S., §§ 1451 - 1471.

**COMMENT PERIOD:**

Anyone may submit written comments to Ed Fite at the Scenic Rivers Commission through October 31, 2015. The OSRC is located 2 miles northeast of Tahlequah on State Highway #10, and its mailing address is P.O. Box 292, Tahlequah, OK 74465-0292. You may also email to ed.fite@osrc.ok.gov.

The OSRC will then consider adopting the proposed rules at a special business meeting at 5:30 p.m. on Tuesday, November 17, 2015, at the Tahlequah Armory Municipal Center, located at 100 North Water Street, Tahlequah, Oklahoma.

**PUBLIC HEARING:**

A public hearing to take comments will convene during the November 17, 2015 Special Business Meeting.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

N/A

**COPIES OF PROPOSED RULES:**

Copies of the proposed rules may be obtained by writing to or visiting the OSRC office listed above, or from the OSRC website at www.ok.gov/osrc.

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S., § 303(D), a rule impact statement is being prepared and will be available for review at the OSRC office and website by October 15, 2015.

**CONTACT PERSON:**

Ed Fite, (918) 456-3251

[OAR Docket #15-786; filed 9-11-15]

**TITLE 630. SCENIC RIVERS COMMISSION  
CHAPTER 10. LICENSING AND USE  
PERMITS**

[OAR Docket #15-787]

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

- Subchapter 1. General Provisions and Licensing
  - 630:10-1-5. Commercial licensing procedures, requirements, and annual use fees [AMENDED]
  - 630:10-1-6. Suspend or revoke license or permit [AMENDED]
  - 630:10-1-7. Limitation on licensing of flotation devices [AMENDED]
  - 630:10-1-9. Non-commercial fee procedures[AMENDED]
- Subchapter 2. Public Access Areas
  - 630:10-2-2. ~~Camping~~Public access area fees [AMENDED]
  - 630:10-2-4. Use of public access areas [AMENDED]
- Subchapter 3. Boater Safety [NEW]
  - 630:10-3-1. Life Jackets [NEW]
  - 630:10-3-2. Alcoholic beverages [NEW]

**SUMMARY:**

This proposed rulemaking action is intended to satisfy the overwhelming public demands that the OSRC act to reduce drunken behavior on the Illinois River. A new Subchapter 3 is to be added in this regard, following a finding by the Commission that drunkenness is a public nuisance, with abatement to occur by limiting the concentration of alcoholic beverages to no greater than 3.2% by weight, and by limiting the quantity to no more than one six-pack per adult in a flotation device. However, to increase the presence of law enforcement to make this new requirement effective, with the OSRC legislative budget having been reduced, there is also a proposed new fee for the use of public access areas owned or controlled by the OSRC. The proposed new fee will apply to those commercial operators who wish to use OSRC access areas to launch and retrieve their boats, and also to members of the general public who wish to enter and use the public access areas on weekends from May through September. There is no change in the camping fees. All of the OSRC fees are proposed to be set out in a new appendix, making all fee changes subject to either rulemaking or legislation. An additional change would limit to the 2015 amount the number of raft licenses in CFA Two in order to reduce congestion. Finally there is

## Notices of Rulemaking Intent

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a proposal to delete, as no longer necessary, the requirement that commercial operators identify themselves on both sides of their flotation devices.

**AUTHORITY:**

Scenic Rivers Commission; 82 O.S., §§ 1451 - 1471.

**COMMENT PERIOD:**

Anyone may submit written comments to Ed Fite at the Scenic Rivers Commission through October 31, 2015. The OSRC is located 2 miles northeast of Tahlequah on State Highway #10, and its mailing address is P.O. Box 292, Tahlequah, OK 74465-0292. You may also email to ed.fite@osrc.ok.gov.

The OSRC will then consider adopting the proposed rules at a special business meeting at 5:30 p.m. on Tuesday, November 17, 2015, at the Tahlequah Armory Municipal Center, located at 100 North Water Street, Tahlequah, Oklahoma.

**PUBLIC HEARING:**

A public hearing to take comments will convene during the November 17, 2015 Special Business Meeting.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

Small business will be impacted by the new fees in this proposed rulemaking, and possibly by the new signage and reporting requirements. The OSRC requests that any business entity affected by these proposed changes provide the OSRC with information, within the comment period, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred due to compliance with the proposed rules.

**COPIES OF PROPOSED RULES:**

Copies of the proposed rules may be obtained by writing to or visiting the OSRC office listed above, or from the OSRC website at [www.ok.gov/osrc](http://www.ok.gov/osrc).

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S., § 303(D), a rule impact statement is being prepared and will be available for review at the OSRC office and website by October 15, 2015.

**CONTACT PERSON:**

Ed Fite, (918) 456-3251

*[OAR Docket #15-787; filed 9-11-15]*

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### TITLE 630. SCENIC RIVERS COMMISSION CHAPTER 15. PROTECTION OF NATURAL RESOURCES

*[OAR Docket #15-788]*

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

630:15-1-7. ~~Glass and Styrofoam~~ Certain containers prohibited [AMENDED]

630:15-1-15. Tying flotation devices prohibited [AMENDED]

**SUMMARY:**

The changes in Chapter 15 would, on the Scenic rivers, allow prescription medicine to be carried in glass containers and prohibit Jell-O-shot containers. The changes would also, for flotation devices, reduce the capacity of ice chests from 50 quarts to 38 quarts and clarify a prohibition on tying flotation devices together.

**AUTHORITY:**

Scenic Rivers Commission; 82 O.S., §§ 1451 - 1471.

**COMMENT PERIOD:**

Anyone may submit written comments to Ed Fite at the Scenic Rivers Commission through October 31, 2015. The OSRC is located 2 miles northeast of Tahlequah on State Highway #10, and its mailing address is P.O. Box 292, Tahlequah, OK 74465-0292. You may also email to ed.fite@osrc.ok.gov.

The OSRC will then consider adopting the proposed rules at a special business meeting at 5:30 p.m. on Tuesday, November 17, 2015, at the Tahlequah Armory Municipal Center, located at 100 North Water Street, Tahlequah, Oklahoma.

**PUBLIC HEARING:**

A public hearing to take comments will convene during the November 17, 2015 Special Business Meeting.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

N/A

**COPIES OF PROPOSED RULES:**

Copies of the proposed rules may be obtained by writing to or visiting the OSRC office listed above, or from the OSRC website at [www.ok.gov/osrc](http://www.ok.gov/osrc).

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S., § 303(D), a rule impact statement is being prepared and will be available for review at the OSRC office and website by October 15, 2015.

**CONTACT PERSON:**

Ed Fite, (918) 456-3251

*[OAR Docket #15-788; filed 9-11-15]*

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

*[OAR Docket #15-777]*

### RULEMAKING ACTION:

EMERGENCY adoption

### RULES:

Subchapter 13. Student Assessment

210:10-13-2. Oklahoma School Testing Program (OSTP) scope and general administration [AMENDED]

### AUTHORITY:

State Board of Education; 70 O.S. § 3-104; 70 O.S. § 1210.505 et seq.

### ADOPTION:

July 23, 2015

### APPROVED BY GOVERNOR:

July 30, 2015

### EFFECTIVE:

Immediately upon Governor's approval

### 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 proposed rule amendment is necessary as an emergency action so the change to the rule can be in effect for the upcoming school year. The State Department of Education's definition of "Full Academic Year student", used in school accountability measures, is updated to better reflect Oklahoma school districts' academic year to ensure accountability calculations give the most accurate representation possible of a school's impact on student performance.

### ANALYSIS:

The "Full Academic Year" classification is used in the context of federal and state school accountability measures, and each state's educational agency sets its own state definition for "Full Academic Year". The proposed amended definition more accurately reflects the practice of most Oklahoma school districts to begin the school year in August, earlier in the year than most states that use a definition based on October 1 enrollment.

### CONTACT PERSON:

Lori Murphy, (405) 522-5260

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

## SUBCHAPTER 13. STUDENT ASSESSMENT

### 210:10-13-2. Oklahoma School Testing Program (OSTP) scope and general administration

(a) **Definitions.** In this Section, the words and terms shall have the following meaning: "**Proficient/Satisfactory**" means achieving at least the minimum score for demonstrating mastery as defined by the State Board of Education on an academic achievement test of the Oklahoma School Testing Program (OSTP).

(b) All public school districts shall administer the state mandated academic achievement tests of the OSTP to all students enrolled in the designated grades. The series of tests shall be field-tested/implemented by the amended schedule in 70 O.S. § 1210.508, or federal law.

(1) Students with Individualized Education Programs (IEPs) shall have an appropriate statement on the IEP with regard to the type of assessment in which the student will participate (e.g., Oklahoma Core Curriculum Test (OCCT) with or without accommodations, or the Oklahoma Alternate Assessment Program (OAAP) Portfolio). The OCCT and OAAP Portfolio are all a part of the Oklahoma School Testing Program (OSTP). Any state approved accommodations must be documented in the student's current IEP. Current documentation for each student shall be on file in the local school prior to test administration.

(2) All students who have been determined to be limited English proficient (LEP) as the term is defined at 20 U.S.C. § 7801, also known as English language learners (ELL), shall be included in all of the state-mandated academic achievement tests of the OSTP. ELL students are those who have been appropriately identified, through English proficiency screening by the local school districts, as requiring specialized instructional services designed to increase their English proficiency and academic performance. For every student identified as ELL, the local district shall have on file verification that the student is receiving special instruction designed for the specific purpose of improving the ELL student's English proficiency. Any State Department of Education approved and adopted English proficiency assessment shall be considered an official assessment of the OSTP, and will be subject to

## Emergency Adoptions

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the same security, privacy, and administration measures accorded to all other OSTP assessments.

(A) Students identified as ELL shall be assessed in a valid and reliable manner with the state academic assessments with acceptable accommodations as necessary and, to the extent practicable, with alternate assessments aligned to the state assessment provided by the local school district in the language and form most likely to yield accurate data on what such students know and can do in these content areas; these alternate assessments will continue until such students have achieved English language proficiency with the exception noted in paragraph (2)(B) of this subsection.

(B) If ELL students are administered the state-mandated reading and language arts achievement tests in a language other than English, this will be allowed only during their first three consecutive years of school attendance in the United States (not including Puerto Rico). After these first three years these tests must be administered in English, except that if the local school district determines on a case-by-case basis, that a student has not yet reached a level of English language proficiency that will allow valid and reliable information to be obtained, even with testing accommodations, in which case individual waivers will be allowed by the local district for up to two additional consecutive years, according to federal law.

(3) All End-of-Instruction assessments must be taken once the corresponding course of instruction has been completed. In order to meet the Federal No Child Left Behind (NCLB) legislation requirements, all students prior to graduating from high school must take the Algebra I, Biology I, and English II assessments regardless of whether instruction has been taken, unless otherwise exempt.

(c) On an annual basis, school superintendents or their designees shall provide a copy of the State Board of Education Rules, OAC 210:10-13, for all school personnel responsible for receipt, inventory, distribution, or return of tests documents, and/or for administration of tests within the Oklahoma School Testing Program.

(d) Districts may request special reports beyond those provided by state contract with the testing company at their own cost (i.e., individual student records on CD or disk, District Title I Report, District Alpha Order Report, etc.).

(e) Test results of all students not enrolled in a district for a full academic year shall be disaggregated and shall not be used to determine the progress of the district, according to federal law. Test results of all students not enrolled in a school site for a full academic year shall be disaggregated and shall not be used to determine the progress of the school site, according to federal law. For purposes of the OSTP, a student shall be considered a "Full Academic Year" (FAY) student if the student is enrolled within the first twenty (20) instructional days of the school's instructional year through and including

the date of administration of the exam, without an enrollment lapse of ten (10) or more consecutive instructional days.

(f) For purposes of the annual reports of the OSTP, test results of all students who have been placed in a state juvenile facility by state law or court order, or students placed in a full time residential facility providing educational services to students by joint agreement with one or more school districts shall not be used to determine the progress of the site or the district of residence of the students ~~unless the facility has been specifically designated as a separate site within a school district and has been assigned a separate site code within the school district by the State Department of Education at the request of the school district~~. Instead their scores will be used in accountability calculations in one statewide "virtual" district.

(g) Each public school student who does not score at least at the satisfactory level on state criterion-referenced tests in reading and mathematics by the end of the student's seventh grade year shall be provided remediation for the purpose of assisting the student in performing at least at the satisfactory level on the eighth-grade criterion-referenced tests in reading and mathematics. Each public school student who does not score at least at the satisfactory level on state criterion-referenced tests in reading and mathematics by the end of the student's eighth grade year shall be provided remediation for the purpose of assisting the student in performing at least at the satisfactory level on the end-of-instruction tests administered in high school. Each public school student who does not attain at least a satisfactory or proficient score on the state end-of-instruction tests shall be provided remediation for the purpose of assisting the student in attaining at least a satisfactory or proficient score on the Algebra I, English II, and two of the remaining five end-of-instruction tests, in order to graduate from an Oklahoma accredited public high school.

(1) Districts and/or schools may provide remediation through extended instructional time during the school day, a summer academy, tutoring, online coursework, or other supplementary services. Remediation is not limited to these practices.

(2) Remediation provided shall be under the supervision of a highly qualified teacher in the appropriate content area.

(3) The State Department of Education shall provide information about best practices for remediation and interventions on the State Department of Education website.

(4) Each district shall submit an annual remediation plan to its local board of education at a regularly scheduled meeting prior to November 15 of each school year. The remediation plan shall be for those students who do not attain at least a satisfactory or proficient score on the tests listed in this section. The plan should include how remediation funds will be spent, when and where remediation will be provided, what content will be addressed, how instruction will be delivered, and who will provide the instruction, including the highly qualified status of the instructor.

(5) Funds for remediation shall be disbursed by the State Department of Education to the local school districts

by September 1 of each year in accordance with the requirements of 70 O.S. § 1210.526. Funds for each fiscal year shall be based on the most recent OSTP test results available for each student from the previous school year or summer test administration.

(6) Funds for remediation shall be utilized to provide intervention and remediation for qualifying students as described in this section. Allowable expenditures include salaries and stipends for highly qualified teachers and tutors under the supervision of highly qualified teachers; instructional materials such as textbooks, workbooks, teacher-made materials, computer assisted instructional software, manipulatives, and classroom instructional tools necessary to provide remediation; assessments designed to monitor the progress of students in remediation programs; transportation to and from tutoring sessions held outside of the school day; and training in best practices for providing remediation. Funds for remediation may not be used for salaries, materials, or administrative services not directly related to remediation or for students who do not qualify for remediation as described in this section.

(7) School districts shall report the use of remediation funds and the results of the remediation, as measured by periodic progress assessments and district student performance on state assessments. Districts shall submit an online report annually to the State Department of Education through the Oklahoma School District Reporting Site (SDRS). The district shall also submit the annual report to its local board of education at a regularly scheduled meeting. Remediation results shall be presented by a designated public school principal for each site.

*[OAR Docket #15-777; filed 9-8-15]*

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

*[OAR Docket #15-778]*

**RULEMAKING ACTION:**

EMERGENCY adoption

**RULES:**

Subchapter 13. Student Assessment  
210:10-13-22. Implementation of system of school improvement and accountability [AMENDED]

**AUTHORITY:**

State Board of Education; 70 O.S. § 3-104; 70 O.S. § 1210.505 et seq.

**ADOPTION:**

July 23, 2015

**APPROVED BY GOVERNOR:**

July 30, 2015

**EFFECTIVE:**

Immediately upon Governor's approval

**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 proposed rule amendment is necessary as an emergency action so the change to the rule can be in effect for the upcoming school year. The State Department of Education's definition of "Full Academic Year student", used in school accountability measures, is updated to better reflect Oklahoma school districts' academic year to ensure accountability calculations give the most accurate representation possible of a school's impact on student performance.

**ANALYSIS:**

The "Full Academic Year" classification is used in the context of federal and state school accountability measures, and each state's educational agency sets its own state definition for "Full Academic Year". The proposed amended definition more accurately reflects the practice of most Oklahoma school districts to begin the school year in August, earlier in the year than most states that use a definition based on October 1 enrollment.

**CONTACT PERSON:**

Lori Murphy, (405) 522-5260

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

**SUBCHAPTER 13. STUDENT ASSESSMENT**

**210:10-13-22. Implementation of a system of school improvement and accountability**

(a) **Purpose.** Accountability for student learning is the key focus of school improvement. Results from the statewide assessment program shall form the basis of the system of school improvement and accountability. Student achievement data from the State's annual standardized assessments in grades three (3) through eight (8) and end-of-instruction tests administered under Section 1210.508 of Title 70 shall be used to establish both proficiency levels and annual progress for individual students, school sites, school districts, and the State. Results shall further be used as the primary criteria in calculating school performance grades as specified in subsection (f) of this rule and shall be annually reported. Results may further be used by the Legislature in calculating any performance-based funding policy that is provided to public school districts. The statewide assessment program shall be used to measure the annual learning gains of each student toward achievement of the State standards appropriate for the student's grade level and to inform parents of the educational progress of their public school children.

(b) **Overview and implementation.** The A-F school accountability system will be implemented in the year 2012, based on data from the 2011-2012 school year, and shall be reported annually thereafter. The school accountability system will be considered to be fully implemented with the following accountability elements:

(1) Designation of overall school performance grades shall be based on a combination of the following:

(A) Fifty percent (50%) on whole school performance, as measured by allocating one (1) point for each student who scores proficient or advanced on the criterion-referenced tests and end-of-instruction tests administered to students pursuant to the provisions of the Oklahoma School Testing Program at 70 O.S.

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§§ 1210.508 and 1210.523, summing the points, and dividing the points by the total number of students taking the tests;

(B) Twenty-five percent (25%) on whole school growth, measured by allocating one (1) point for each student tested who maintains a score of "Proficient" or above, improves proficiency levels, or improves substantially within a proficiency level on the State's annual standardized assessments in reading and mathematics in grades three (3) through eight (8) and Algebra I and English II end-of-instruction tests administered to students pursuant to the provisions of the Oklahoma School Testing Program at 70 O.S. § 1210.508, summing the points, and dividing the points by the total number of students taking the tests;

(C) Twenty-five percent (25%) on growth of the lowest twenty-five percent (25%) of students in the school, measured by allocating one (1) point for each student tested in the bottom twenty-five percent (25%) who maintains a score of "Proficient" or above, improves proficiency levels, or improves substantially within a proficiency level on the State's annual standardized assessments in reading and mathematics in grades three (3) through eight (8) and Algebra I and English II end-of-instruction tests administered pursuant to the provisions of the Oklahoma School Testing Program at 70 O.S. § 1210.508, summing the points, and dividing the points by the total number of students taking the tests.

(2) In addition to the three criteria listed in (b)(1) of this Section, bonus points shall be calculated in accordance with the criteria set forth in (g) of this Section and added to the subtotal of component points to create a final report card index of points used to calculate the overall school performance grade of each school site.

(3) Schools shall earn a separate performance grade for each of the three criteria listed in (b)(1) and (f) of this Section. Additionally, schools shall earn an overall performance grade based on a combination of the criteria listed in (b)(1) and (f) and the bonus points earned in accordance with (g) of this Section.

(4) To ensure that student data accurately represent school performance, schools shall be required to assess at least ninety-five percent (95%) of eligible students to earn a school performance grade. Failure to assess at least ninety-five percent (95%) of eligible students will result in a letter grade reduction in the school's overall school performance grade. Schools assessing less than ninety percent (90%) of eligible students will result in the school earning an overall performance grade of F.

(c) **School Accountability for Student Performance.** All schools shall be accountable for performance. Each school is accountable for the performance of its entire student population. Student achievement data from the State's annual standardized assessment and end-of-instruction tests administered in this State shall be used to measure a school's student performance for the subject areas of reading, mathematics, social studies, science and writing.

(d) **Reporting Student Achievement Data for School Accountability.** Student achievement data shall be reported for all students in a school. Each year, reports of achievement data for all students shall be prepared for each school, each district, and the State. District reports shall be calculated in the same manner as a school site, aggregated at the student level and calculated in accordance with the requirements of 70 O.S. §§ 1210.545(B), (D) and (J).

(1) The scores will be computed from the number of eligible students enrolled in the school. Eligible students shall include all students enrolled for the full academic year ("FAY") in the school and taking the State's annual standardized assessments or end-of-instruction tests. For end-of-instruction exams, only first opportunity students are included in the calculation of eligible students. A ~~full time~~ student shall be considered a "FAY" student if the student, ~~has been continuously~~ is enrolled from October 1 of the school within the first twenty (20) instructional days of the school's instructional year through and including the date of administration of the exam, and has not experienced an enrollment lapse of ten (10) or more consecutive instructional days. The FAY determination shall be based on continuous enrollment and shall not be based on attendance determinations.

(2) All eligible students, regardless of disability or limited English proficiency classification, with valid state standardized assessment scores in reading and math in both the current school year and the previous school year are included in (f)(2) and (f)(3) of this Section regarding the determination of student learning gains. In addition, the inclusion of these students shall be applied to (b)(3) of this Section, regarding the percentage of students assessed. Current and previous school years' reading and math scores for students with disabilities assessed on the State's annual standardized alternate assessment shall be included in the determination of test scores, including achievement addressed in (f)(1) of this Section.

(3) The Superintendent of Public Instruction is authorized to designate a single school performance grade for schools that serve multiple levels: elementary and/or middle and/or high school grade levels. Designations shall be made based on the highest grade level offered by the school.

(A) If the highest grade offered by a school site is the sixth (6<sup>th</sup>) grade or below, the school shall be graded according to elementary school criteria.

(B) If the highest grade offered by a school site is the (7<sup>th</sup>) through tenth (10<sup>th</sup>) grade, the school shall be graded according to the middle school criteria. Schools in this category shall not earn advance coursework credit for ninth and tenth grade students completing high school coursework unless the course qualifies as advanced coursework pursuant to (g)(1)(B) or (g)(2)(A) of this Section.

(C) If the highest grade offered by a school site is the eleventh (11<sup>th</sup>) or twelfth (12<sup>th</sup>) grade, the school shall be graded according to high school criteria.

(4) The State Department of Education will verify that each school is appropriately classified by type before the issuance of school grades. School type is defined as the school level designation of a school based on the grade levels served: elementary, middle, high, or a combination across levels.

(5) For purposes of (f) of this Section, the determination of the proficiency level of eligible students exempted from one or more end-of-instruction exams in accordance with the requirements of 70 O.S. 1210.523 and the accompanying rule at 210:10-13-16(b)(7)-(8) shall be based upon the cut scores approved by the State Board of Education. Points shall be awarded and calculated for each "Proficient" or "Advanced" score in accordance with (f) of this Section.

(e) **School Performance Grades.** The measure of school accountability shall be the school performance grade. The Oklahoma State Board of Education is authorized to designate a school performance grade for each school that:

(1) For purposes of calculating student achievement pursuant to (f)(1), has at least ten (10) eligible students with valid student state standardized assessment scores.

(2) For purposes of calculating student growth pursuant to (f)(2), has at least ten (10) eligible students with valid student state standardized assessment scores or end-of-instruction test scores in reading or math in both the current and the previous school years.

(3) For purposes of calculating growth of the lowest twenty-five percent (25%) of students pursuant to (f)(3), has at least ten (10) eligible students with valid student state standardized assessment scores or end-of-instruction test scores in reading or math in the current and previous school years.

(4) A school shall not earn a grade for any component or criteria unless minimum N-size requirements established pursuant to this rule are met. Performance designations shall be made using School Performance Grades A+, A, A-, B+, B, B-, C+, C, C-, D+, D, D- and F. School performance grades shall be based on the assessments and criteria as specified in (f) of this Section and bonus points as specified in (g) of this Section. The Superintendent of Public Instruction is authorized to establish and adjust appropriate achievement level criteria to the extent allowed by law for submission to the State Board of Education for final approval.

(f) **Criteria for Designating School Performance Grades.** Overall school performance grades shall be based on a combination of the bonus points calculated in accordance with (g) and the points calculated in accordance with the three criteria outlined in (b)(1) of this Section: (1) whole school performance; (2) whole school growth; and (3) growth of the lowest twenty-five percent (25%).

(1) **Whole school performance index.** Student achievement scores are represented through a performance index, aggregated for each school, calculated based on all state standardized assessments and/or end-of-instruction tests collectively, and by each subject area. A

point value shall be given to each exam based on proficiency score. Points shall be summed and divided by the number of exams administered to eligible students.

(A) Points shall be assigned based on the following criteria:

- (i) Unsatisfactory = 0
- (ii) Limited Knowledge = 0
- (iii) Proficient = 1.0
- (iv) Advanced = 1.0

(B) A letter grade shall be earned based on the following criteria:

- (i) 90 points or Above = A
- (ii) 80 - 89 points = B
- (iii) 70 - 79 points = C
- (iv) 60 - 69 points = D
- (v) 59 points or Below = F

(2) **Whole school growth index.** Annual learning gains in reading and math are represented through a growth index, aggregated for each school. The score shall be calculated in whole and by subject-matter by assigning one point for each student who improves proficiency levels or improves substantially within a proficiency level from the previous school year to the current school year, divided by the number of students taking the tests.

(A) This calculation represents the number of eligible students who have:

- (i) Improved their state standardized assessment achievement level or state standardized alternative assessment achievement level, as applicable, from the previous school year to the current school year; or
- (ii) Improved their state standardized assessment achievement level or state standardized alternative assessment achievement level and such change in OPI from the previous school year to the current school year met or exceeded the State average of students with positive OPI change; or
- (iii) Maintained their proficient or satisfactory achievement level on the state standardized assessment or state standardized alternate assessment, as applicable, from the previous school year to the current school year.

(B) The growth index shall be calculated based on improved state standardized assessment and end-of-instruction test performance from the previous school year to the current school year. The growth index shall be calculated by subject-matter and by assigning a point value to the change in proficiency score from the previous year to the next. Points based on student gains shall be summed and divided by the number of exams administered, and shall include only eligible students for whom comparative test scores exist. Points shall be assigned based on the following criteria:

- (i) Change from Unsatisfactory to Limited Knowledge = 1.0
- (ii) Change from Unsatisfactory to Proficient or Satisfactory = 1.0

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(iii) Change from Unsatisfactory to Advanced = 1.0

(iv) Change from Limited Knowledge to Proficient or Satisfactory = 1.0

(v) Change from Limited Knowledge to Advanced = 1.0

(vi) Change from Proficient or Satisfactory to Advanced = 1.0

(vii) Remain Proficient or Advanced from Year 1 to Year 2 = 1.0

(viii) Remained at Unsatisfactory from Year 1 to Year 2 and Meets or Exceeds State Average Positive Change or remained at Limited Knowledge from Year 1 to Year 2 and Meets or Exceeds State Average Positive Change = 1.0

(ix) Remained at Unsatisfactory from Year 1 to Year 2 and Fails to Meet or Exceed State Average Positive Change or remained at Limited Knowledge from Year 1 to Year 2 and Fails to Meet or Exceed State Average Positive Change = 0

(x) Remained at Unsatisfactory from the previous school year to the current school year, or remained at Limited Knowledge from the previous school year to the current school year, but demonstrates substantial improvement within a proficiency level = 1.0

(C) For purposes of this subparagraph, a student's improvement within a proficiency level will be considered "substantial improvement" if the student demonstrates an increase in Oklahoma Performance Index ("OPI") score from the previous school year to the current school year that meets or exceeds the average positive increase amongst all students in the State who increased their OPI score from the previous school year to the current school year.

(D) A letter grade shall be earned based on the following criteria:

(i) 90 points or Above = A

(ii) 80 - 89 points = B

(iii) 70 - 79 points = C

(iv) 60 - 69 points = D

(v) 59 points or Below = F

(3) **Growth of the lowest twenty-five percent of students.** Improvement of the lowest twenty-five percent (25%) of students in reading and math shall be aggregated, as required by 70 O.S. § 1210.545. The score shall be calculated in whole and by subject-matter by assigning one point for each student in the bottom quartile who improves proficiency levels or improves substantially within a proficiency level from the previous school year to the current school year, divided by the number of students taking the test.

(A) The calculation of a positive change in OPI score that meets or exceeds the State's average growth represents the number of eligible students who have:

(i) Improved their state standardized assessment achievement level or state standardized

alternative assessment achievement level, as applicable, from the previous school year to the current school year; or

(ii) Retained their state standardized assessment achievement level or state standardized alternative assessment achievement level and such change in OPI from the previous school year to the current school year met or exceeded the State average of students with positive OPI change.

(B) The score shall be based on improved state standardized assessment and end-of-instruction test performance from the previous school year to the current school year. Points based on student gains shall be summed and divided by the number of exams administered, and shall include only eligible students for whom comparative test scores exist. The growth of the lowest twenty-five percent (25%) shall be calculated based on the following criteria:

(i) Change from Unsatisfactory to Limited Knowledge = 1.0

(ii) Change from Unsatisfactory to Proficient or Satisfactory = 1.0

(iii) Change from Unsatisfactory to Advanced = 1.0

(iv) Change from Limited Knowledge to Proficient or Satisfactory = 1.0

(v) Change from Limited Knowledge to Advanced = 1.0

(vi) Change from Proficient or Satisfactory to Advanced = 1.0

(vii) Remain Proficient or Advanced from Year 1 to Year 2 = 1.0

(viii) Remained at Unsatisfactory from Year 1 to Year 2 and Meets or Exceeds State Average Positive Change or remained at Limited Knowledge from Year 1 to Year 2 and Meets or Exceeds State Average Positive Change = 1.0

(ix) Remained at Unsatisfactory from Year 1 to Year 2 and Fails to Meet or Exceed State Average Positive Change or remained at Limited Knowledge from Year 1 to Year 2 and Fails to Meet or Exceed State Average Positive Change = 0

(x) Demonstrates substantial improvement within a proficiency level = 1.0

(C) For purposes of this subparagraph, a student's improvement within a proficiency level will be considered "substantial improvement" if the student demonstrates an increase in Oklahoma Performance Index ("OPI") score from the previous school year to the current school year that meets or exceeds the average positive increase amongst all students in the State who increased their OPI score from the previous school year to the current school year.

(D) A letter grade shall be earned based on the following criteria:

(i) 90 points or Above = A

(ii) 80 - 89 points = B

(iii) 70 - 79 points = C

- (iv) 60 - 69 points = D
- (v) 59 points or Below = F

(g) **Bonus points.** Each school can earn up to a maximum of ten (10) bonus points to be added to the subtotal of component points and applied toward their final grade. The criteria listed in (1), (2) and (3) of this subsection shall be used to calculate bonus points for high schools, middle schools, and elementary grade schools. Annually, the Oklahoma State Department of Education shall publish technical assistance specifically detailing the weighted formula and the projected availability of valid data used for computing bonus points. Technical assistance shall be published in time for school districts to make meaningful use of the information and data. A school district, charter school, or virtual charter school shall not be eligible to be awarded bonus points on its site report cards for attendance pursuant to (g)(3)(A) and (g)(2)(B) of this Section unless it has established a method for maintaining accurate records of student daily attendance and accurate reporting of student daily attendance that ensures compliance with the provisions of 70 O.S. §§ 5-117.3, 10-103.1, 10-106, 18-111, 18-116.

(1) **High schools.** Schools comprised of high school grades may earn up to a maximum of ten (10) bonus points as follows:

(A) **Four-year adjusted cohort graduation rate.** A high school shall earn five (5) bonus points if its four-year adjusted cohort graduation rate meets or exceeds the criteria for earning an "A" for the high school graduation rate of the school. The criteria for earning an "A" for this component shall be met if a school's four-year adjusted cohort graduation rate meets or exceeds ninety percent (90%). The calculation of the four-year adjusted cohort graduation rate shall only include students counted as on-time graduates as defined by federal regulations.

(B) **Participation or performance in accelerated coursework.** One (1) bonus point shall be awarded to each high school that meets or exceeds the criteria for earning an "A" in either student participation or student performance in accelerated coursework. The criteria for earning an "A" for this component shall be met if the school achieves either a student participation rate of seventy percent (70%) or higher in accelerated coursework or a student performance rate of ninety percent (90%) or higher in accelerated coursework. Student participation and performance rates shall be calculated as follows:

(i) **Participation in accelerated coursework.** Participation in accelerated coursework, is defined as participation in Advanced Placement (AP) courses, International Baccalaureate (IB) programs, concurrent enrollment, Advanced International Certificate of Education (AICE) courses, and industry certification courses. For this component, participation shall be calculated for the school year by dividing a count of accelerated coursework participants in grades nine (9) through twelve (12) (numerator) by the count of all students enrolled in grades eleven (11) and

twelve (12) (denominator). For this component, a student must earn a passing grade in the course in order to be counted as a participant. Schools shall earn credit for every accelerated course in which a student is enrolled. Students enrolled in multiple accelerated courses shall be counted once for each course in which they are enrolled. In calculating a percentage for this component, participation rate shall include all enrollment data regardless of whether the course was taught at the high school, at a career technology center, an accredited college or university, or at a regional site of the Oklahoma School of Science and Mathematics.

(ii) **Performance in accelerated coursework.** Performance in concurrent enrollment, Advanced International Certificate of Education (AICE) courses, Advanced Placement (AP), International Baccalaureate (IB), and industry certification courses. For this component, the numerator of the performance calculation shall include all students in grades nine (9) through twelve (12) who took an accelerated course or subject area examination during the academic year. AICE successful completion is defined as earning a "C" or higher and being awarded credit for specific postsecondary course(s). For concurrent enrollment, successful completion is defined as a passing grade of "C" or higher in a concurrent enrollment course for college credit. For industry certification, successful completion is defined as earning a "C" or better in the course leading to industry certification. Schools can earn additional successful completions for students who achieve industry certifications that result in credit for more than one (1) college course through statewide articulation agreements. For AP and IB performance, credit shall be earned based for each student scoring a three (3) or better on the AP exams, or a four (4) or better on IB exams. For purposes of this component, a school shall earn credit for every course in which a student demonstrates the required level of performance. In calculating a percentage for this component, performance shall include all coursework regardless of whether the course was taught at the high school, at a career technology center, an accredited college or university, or at a regional site of the Oklahoma School of Science and Mathematics.

(C) **ACT and SAT participation or performance.** One (1) bonus point shall be awarded to each high school that meets or exceeds the criteria for earning an "A" in either student participation or performance on ACT or SAT college entrance exams. The criteria for earning an "A" for this component shall be met if a school achieves a rate of seventy-five percent (75%) or higher percentage of either student participation or performance on college entrance

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exams. Student participation and performance rates shall be calculated as follows:

(i) **ACT and SAT participation.** High schools may earn one (1) bonus point based on the calculated percent of students taking the ACT and/or SAT. The percent is calculated by dividing the number of twelfth (12<sup>th</sup>) grade students who have taken the ACT and/or SAT tests, divided by the number of students enrolled in grade twelve (12). Students will be counted once for the ACT and/or once for the SAT, regardless of the number of times or at which grade levels the test(s) are taken. The high school will earn credit for the most recent test score reported at the time the test is administered.

(ii) **ACT and SAT performance.** High schools may earn one (1) bonus point based on the percentage of students scoring an ACT composite score of 20 or greater based on 36-point scale, and/or an SAT score of 1410 or greater based on a 2400-point scale. Students will be counted once for the ACT and/or once for the SAT, regardless of the number of times or at which grade levels the test(s) are taken. The high school will earn credit for the most recent test score reported at the time the test is administered.

(D) **High school graduation rate of eighth (8<sup>th</sup>) graders.** One (1) bonus point shall be awarded to each high school that meets or exceeds the criteria for earning an "A" for the a high school graduation rate of students who scored at limited knowledge or unsatisfactory on the eighth (8<sup>th</sup>) grade reading and mathematics criterion-referenced test administered pursuant to the Oklahoma State Testing Program (OSTP). The criteria for earning an "A" for this component shall be met if a school achieves a graduation rate of eighty-five percent (85%) or higher for its students who scored at limited knowledge or unsatisfactory on the eighth grade reading and mathematics tests. For this component, schools shall be eligible to earn the bonus point based on the calculation of the graduation rate of this population of eighth (8<sup>th</sup>) graders, regardless of where the student attended the eighth (8<sup>th</sup>) grade.

(E) **Overall EOI performance.** Upon the availability of valid student assessment data, one (1) bonus point shall be awarded to a high school if eighty percent (80%) or more of its graduates from the previous school year have scored either a "Satisfactory/Proficient" or "Advanced" on six (6) out of the seven (7) secondary level EOI assessments required by the Oklahoma School Testing Program Act at 70 O.S. § 1210.508(A)(6).

(F) **Year-to-year growth.** Upon the availability of valid student data, one (1) bonus point shall be awarded to each high school which demonstrates improvement from the previous school year in at least three (3) of the five (5) components used to calculate

bonus points set forth in (1)(A) through (1)(E) of this subsection. For purposes of this subparagraph, a high school will be deemed to have demonstrated improvement in a category if the school has received bonus points in that category for two consecutive years (i.e., the current report card and the previous year's report card). In the alternative, a high school can demonstrate improvement in a category by meeting the following criteria specified in the category:

(i) **Four-year adjusted cohort graduation rate.** A high school demonstrates improvement by increasing its four-year adjusted cohort graduation rate in (1)(A) of this subsection by at least ten percent (10%) of the difference between the previous year's graduation rate and one hundred percent (100%).

(ii) **Participation or performance in accelerated coursework.** A high school demonstrates improvement by increasing its rate of participation or performance in accelerated coursework in (1)(B) of this subsection by five percent (5%) or more.

(iii) **ACT and SAT participation or performance.** A high school demonstrates improvement by increasing its rate of participation or performance in ACT or SAT in (1)(C) of this subsection by at least ten percent (10%) of the difference between the previous year's rate and one hundred percent (100%).

(iv) **High school graduation rate of eighth (8<sup>th</sup>) graders.** A high school demonstrates improvement by increasing its high school graduation rate of eighth graders in (1)(D) of this subsection by at least ten percent (10%) of the difference between the previous year's graduation rate and one hundred percent (100%).

(v) **Overall EOI performance.** A high school demonstrates improvement by increasing its overall rate of EOI performance in (1)(E) of this subsection by at least ten percent (10%) of the difference between the previous year's rate and one hundred percent (100%).

(2) **Middle schools.** Schools comprised of middle school grade smay earn up to a maximum of ten (10) bonus points as follows:

(A) **The percentage of students who are taking higher level coursework at a satisfactory or higher level in middle school.** Middle schools shall earn two (2) bonus points for meeting or exceeding the criteria for earning an "A" on the rate of the school's middle school students who take accelerated coursework at a satisfactory or higher level. The criteria for earning an "A" for this component shall be met if the school achieves a participation rate of thirty percent (30%) or higher percentage of middle school students taking traditional high school courses pre-Advanced Placement courses, or honors courses in a traditional classroom or in a virtual environment who score at

a satisfactory level or higher on the corresponding state standardized assessment. Schools shall earn credit for every accelerated course in which a student is enrolled. Students enrolled in multiple accelerated courses shall be counted once for each course in which they are enrolled.

(B) **Attendance.** Middle schools will earn six (6) bonus points for meeting or exceeding the criteria for earning an "A" for middle school student attendance. The criteria for earning an "A" for this component shall be met if the school achieves a student attendance rate of ninety-four percent (94%) or higher. This rate is the Average Daily Attendance (ADA) divided by the Average Daily Membership (ADM). ADA is calculated by dividing the total number of days students were present by the number of days in the school calendar or by dividing the number of hours students were present by the number of hours in the school calendar, whichever applicable. ADM is calculated by dividing the total number of days students were enrolled in school by the number of days in the school calendar or by dividing the number of hours students were enrolled by the number of hours in the school calendar, whichever applicable.

(C) **Dropout rate.** Middle schools shall earn two (2) bonus points for meeting or exceeding the criteria for earning an "A" for the drop-out rate of the school. The criteria for earning an "A" for this component shall be met if the school achieves a rate of zero point nine percent (0.9%) or lower of the annual number of students reported as dropouts to the Oklahoma State Department of Education on the Annual Dropout Report.

(3) **Elementary schools.** Schools comprised of elementary school grades shall earn ten (10) bonus points as follows:

(A) **Attendance.** Elementary schools will earn ten (10) bonus points for meeting or exceeding the criteria for earning an "A" on student attendance. The criteria for earning an "A" shall be met if the school achieves a student attendance rate of ninety-four percent (94%) or greater. This rate is the Average Daily Attendance (ADA) divided by the Average Daily Membership (ADM). ADA is calculated by dividing the total number of days students were present by the number of days in the school calendar or by dividing the number of hours students were present by the number of hours in the school calendar, whichever applicable. ADM is calculated by dividing the total number of days students were enrolled in school by the number of days in the school calendar or by dividing the number of hours students were enrolled by the number of hours in the school calendar, whichever applicable.

(h) **Technical assistance.** Annually, the Oklahoma State Department of Education shall publish technical assistance specifically detailing the weighted formula used for computing bonus points. Technical assistance shall be published in time

for school districts to make meaningful use of the information and data.

(i) **School Performance Grading Scale.** The School Performance Grade shall be based on a combination of the factors outlined in sub-section (b)(1) and detailed in (f) and (g) of this Section. Fifty percent (50%) shall be based on student test scores; twenty-five percent (25%) on student learning gains; and twenty-five (25%) on improvement of the lowest twenty-five percent (25%) of students in the school in reading and mathematics. Letter grades will be calculated according to the assigned weight of each criteria and by combining points earned for each component within each criteria. The school performance grade will be assigned according to the following scale:

- (1) Ninety-seven percent (97%) to one-hundred and ten percent (110%) = A+
- (2) Ninety-three percent (93%) to ninety-six percent (96%) = A
- (3) Ninety percent (90%) to ninety-two percent (92%) = A-
- (4) Eighty-seven percent (87%) to eighty-nine percent (89%) = B+
- (5) Eighty-three percent (83%) to eighty-six percent (86%) = B
- (6) Eighty percent (80%) to eighty-two percent (82%) = B-
- (7) Seventy-seven percent (77%) to seventy-nine percent (79%) = C+
- (8) Seventy-three percent (73%) to seventy-six percent (76%) = C
- (9) Seventy percent (70%) to seventy-two percent (72%) = C-
- (10) Sixty-seven percent (67%) to sixty-nine percent (69%) = D+
- (11) Sixty-three percent (63%) to sixty-six percent (66%) = D
- (12) Sixty percent (60%) to sixty-two percent (62%) = D-
- (13) Fifty-nine percent (59%) and below = F

(j) **Accuracy and Representativeness of Performance Data.** The Oklahoma State Department of Education shall review all information submitted by school districts to represent the performance of schools receiving a school performance grade.

- (1) Each school district superintendent shall designate a school accountability contact person to be responsible for verifying accuracy of data.
- (2) The Superintendent of Public Instruction shall withhold the designation of a school's performance grade if he or she determines that the performance data does not accurately represent the progress of the school.

(A) Circumstances under which a school's performance data may be considered to not accurately represent the progress of the school include:

- (i) Less than ninety-five percent (95%) of the school's student population eligible for inclusion in the designation of the school's performance grade was assessed.

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- (ii) Circumstances identified before, during, or following the administration of any state assessment where the validity or integrity of the test results are called into question and are subject to review as determined by the State Department of Education.
- (k) **Data verification by school sites/districts.** School sites shall be provided an opportunity to review all data used to calculate the school performance grade and the calculation of the school performance grade.
- (1) **Initial Data Verification.** Initial data verification of the data used to calculate school performance grades shall occur throughout the school year as data becomes available to the State Department of Education. School district accountability staff shall have the opportunity to perform data verification and confirm that data being used to calculate school performance grades are accurate prior to the review period required by (k)(2) of this rule. The school district shall have at least thirty (30) calendar days to review and request corrections to each new data component, as it becomes available. No requests for changes to data shall be made after the expiration of the respective thirty (30) calendar day review period. For purposes of this paragraph only, a "new data component" means a data component that has not been previously submitted to the State Department of Education in accordance with other state or federal reporting requirements.
- (2) **Calculation Verification.** Prior to the final release of school performance grades, a school district shall have at least ten (10) calendar days to certify the calculation of the performance grade. If the school district determines that a different performance grade should be assigned because of the omission of student data, a data miscalculation, or special circumstances that might have affected the grade assigned, school districts may submit a request for a review of the data calculation to the State Department of Education. All evidence supporting the district's claim of a calculation error and documentation of all elements to be reviewed by the Department must be submitted within the time limits specified in this subsection. No request for review of the calculation shall be accepted after the expiration of the ten (10) calendar day review period. Changes to the criteria, data, or process shall not be considered as part of this review.
- (3) **Data deemed certified.** To ensure timely issuance of the school report cards in accordance with the requirements of 70 O.S. § 1210.545, any data component verification or calculation verification for which a district fails to timely review and certify as accurate in accordance with the provisions of (1) or (2) of this subsection shall be deemed certified as accurate by the district and districts shall not be permitted to request further corrections to the data.
- (l) **Final determination.** The Oklahoma State Board of Education's determination of a school's performance grade shall be final.
- (m) **Planned System Enhancements.** As indicated in this subsection, planned enhancements will occur in the System of

School Improvement and Accountability. The Superintendent of Public Instruction will periodically recommend additional changes to the system to the State Board of Education for approval as necessary to ensure that continuous improvements are made in the educational programs of the State. Performance data shall be reviewed annually to determine whether to adjust the school grading scale for the following year's school grades. Adjustments may include, but shall not be limited to grading criteria, classification of school type, point calculations, point requirements, and minimum points necessary to obtain a certain grade. Adjustments may reset the minimum required number of points for each grade.

(n) **Virtual education providers and virtual charter schools.** Any virtual provider that offers full-time online programs for students enrolled in charter schools sponsored by a school district, technology center school district, higher education institution, a federally recognized Indian tribe, or the State Board of Education, in accordance with the provisions of the Oklahoma Charter Schools Act shall be considered a "virtual charter school."

(1) Each virtual charter school and each school district which contracts with a virtual charter school or virtual education provider shall identify its full-time virtual students who do not live in the physical boundaries of the school district with which the sponsor is associated.

(A) Each virtual charter school and each school district shall report the achievement data of its full-time virtual students who are not residents of the district in which the sponsor is located separate from the achievement data of its full time virtual students who are residents of the district of sponsorship.

(B) The performance of non-resident full-time virtual students identified in (1) of this subsection shall be excluded from the determination of the overall school performance letter grade of the sponsoring school district, but shall be included in the overall school performance letter grade of the virtual charter school as resident students.

(2) Any virtual provider that contracts with a school district to provide full-time virtual education for resident students of the school district shall be considered a separate site within the school district for accountability purposes and shall be issued a separate report card that includes performance of full-time virtual students identified in (1) of this subsection as residents of the school district with which the provider contracts.

(o) **Statewide virtual charter schools.** Any virtual provider sponsored as a charter school by the Statewide Virtual Charter School Board shall be considered a "statewide virtual charter school."

(1) Each statewide virtual charter school will be considered a separate school site and "district" of the Statewide Virtual Charter School Board for accountability purposes and will be subject to the system of school improvement and accountability established by 70 O.S. § 1210.545 and the accompanying provisions set forth in this Section.

(2) The performance of all eligible students enrolled in a statewide virtual charter school shall be included in the calculation of the overall school performance letter grade of the virtual charter school. For purposes of this Section, any student enrolled full-time in a statewide virtual charter school who resides within the borders of the state shall

be considered a resident student of the statewide virtual charter school.

*[OAR Docket #15-778; filed 9-8-15]*

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# 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."

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## TITLE 1. EXECUTIVE ORDERS

**1:2015-39.**

### EXECUTIVE ORDER 2015-39

I, Mary Fallin, Governor of the State of Oklahoma, hereby direct the appropriate steps be taken to fly all American and Oklahoma flags on State property at half-staff from 8:00 a.m. until 5 p.m. on Friday, September 11, 2015, to honor the victims of the September 11, 2001, terrorist attack on America.

This executive order shall be forwarded to the Division 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 10<sup>th</sup> day of September, 2015.

BY THE GOVERNOR OF THE  
STATE OF OKLAHOMA

Todd Lamb

ATTEST:  
Chris Morriss  
Assistant Secretary of State

*[OAR Docket #15-785; filed 9-10-15]*

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